



FEBRUARY 4, 2015

DEFERRED ACTION ON IMMIGRATION: IMPLICATIONS AND UNANSWERED QUESTIONS

U.S. SENATE COMMITTEE ON HOMELAND SECURITY & GOVERNMENTAL AFFAIRS

ONE HUNDRED FOURTEENTH CONGRESS, FIRST SESSION

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AVAILABLE WEBCAST(S):*

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Opening Statement of Chairman Ron Johnson
“Deferred Action on Immigration: Implications and Unanswered Questions”
Wednesday, February 4, 2015

As prepared for delivery:

Good morning and welcome.

On November 20, 2014, the President announced several executive actions, including plans to expand the Deferred Action for Childhood Arrivals Program (DACA) and to extend Deferred Action to Parents of Americans and Lawful Permanent Residents (DAPA). Today’s hearing is aimed at obtaining a more complete understanding of the logistical, financial, and national security implications of these policies.

The Department of Homeland Security (DHS) has stated it will grant legal presence and immigration benefits for individuals who entered this country illegally provided that they:

- Have continuous residence in the United States since January 1, 2010;
- Pass a criminal background check; and
- Pay taxes.

On my first day as Chairman, I sent DHS Secretary Jeh Johnson a letter outlining many unanswered questions associated with these policies. Last week, I received a response to my letter from the Department. While I thank Secretary Johnson for being responsive and answering a number of important questions, still others remain unanswered.

The witnesses we have invited today will help detail some of the specific implications of the Administrations executive policies.

Mr. Stephen Goss, Chief Actuary for the Social Security Administration, will outline the implications of providing Social Security Numbers (SSNs) to deferred action recipients, including the impact of such policies on our long-term Trust Fund liabilities. DHS has confirmed that “if USCIS approves the request for deferred action and the request for work authorization, the requestor may be eligible for a Social Security number.” SSNs are permanent identifiers that enable individuals to receive Social Security and Medicare benefits. This raises the obvious question: Why are we providing a permanent benefit to those eligible for temporary relief?

Ms. Eileen O’Connor is a tax expert who has first-hand experience prosecuting tax fraud for the Department of Justice. She will testify regarding the tax policy implications of providing SSNs to deferred action recipients. CBO has confirmed that those who receive deferred action are considered lawfully present and eligible to receive Medicare and Social Security benefits. This raises another question: what other financial (including tax) benefits will flow to non U.S. citizens?

We are also interested to learn how agencies within DHS will implement these controversial policies. United States Citizenship and Immigration Services (USCIS) is the primary agency tasked with their implementation. Mr. Bellocchi, a former Deputy Ombudsman for USCIS, will provide his perspective on how prepared USCIS is to implement these types of mass enrollments. For instance, how will the agency determine five-year continuous residency and how susceptible to fraud are the documents USCIS will be examining? How will USCIS conduct background checks, how thorough will these checks be, and what crimes will result in a denial of deferred action? Most importantly, we now know that despite the validity of a document or result of a background check, this is a highly discretionary program and the decision to grant deferred action will be entirely in the hands of a newly hired USCIS adjudicator. How will this approach affect the overall policies?

While USCIS will largely be charged with implementing the deferred action policies, documents reveal that Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) agents have received training on how these policies will affect their day-to-day activities. Since a priority for this Committee is to pass a border security and enforcement bill, it is important to understand how the President's executive actions will put more pressure at the borders and affect the work of front line patrol agents charged with securing them. We look forward to hearing from Mr. Shawn Moran, Vice President of the National Border Patrol Council, on this matter.

Building on lessons learned from the Administration's 2012 DACA order, we are concerned that the President's actions in November will result in a new surge at our borders, similar to the surge of Unaccompanied Children from Central America we saw last summer. While we know that DACA was not meant to apply to the unaccompanied minors who arrived last summer, it certainly appears to have affected their decision to make that terrible and dangerous journey on a train known as La Bestia (*The Beast*). In 2014 the number of unaccompanied children apprehended rose from approximately 16,000 in 2011 to 68,631 in 2014.

Finally we are pleased to welcome Mr. Bo Cooper, previously General Counsel for INS. We are interested to learn what you believe will be the implications of the President's executive policies.

Let me conclude by saying that this hearing has been purposefully structured to focus on informing the Committee. This hearing is *not* about the legality or the constitutionality of the President's policies. I have my own opinion on those issues, but will reserve that examination for future hearings, either by this Committee or other committees of jurisdiction.

We all share the mission of this Committee: "To enhance the economic and national security of America." In furtherance of that mission, it is important to examine whether the Administration's executive actions on immigration enhances or reduces the security of our nation. Hopefully, this hearing will help answer that important question.

Opening Statement of Ranking Member Thomas R. Carper
“Deferred Action on Immigration: Implications and Unanswered Questions”
February 4, 2015

As prepared for delivery:

We are here today to learn more about the implementation of the President’s executive actions on immigration. I think that is fair and reasonable oversight for this Committee. As with any new government initiative, there are likely to be a variety of bureaucratic challenges that must be addressed. So I look forward to hearing from all of our witnesses about the challenges that might lie ahead, as well as some possible solutions.

Last Congress, this Committee – and the entire Senate – spent a great deal of time examining our nation’s broken immigration system. After months of debate, two-thirds of the Senate – both Democrats and Republicans – came together to pass a comprehensive immigration reform bill.

The bill was not perfect, but it addressed a number of issues that have plagued our immigration system for years. Perhaps just as important, it would have also reduced our budget deficit by nearly \$200 billion over the next 10 years and by an additional \$700 billion over the following 10 years. Moreover, it would have grown our gross domestic product by as much as five percent over the next 20 years.

As we know, unfortunately, the House did not act on that legislation. As a result, we continue to be left with a broken immigration system that meets neither our economic nor our security needs. Faced with paralysis here in Congress and the continued inefficiency and unfairness in our immigration system, the President decided to try and make several temporary improvements, hoping it would spur those of us in the Congress to finish the job we began almost two years ago. Those improvements – or changes – were not meant to be permanent, but they are what bring us to this debate today.

Look, I know that many of our colleagues have strong misgivings about the President acting on his own on these matters. Nonetheless, I hope we can set aside any frustration over tactics and look at the substance of what the Administration is trying to do. If we can find a way to do that, I think we just might find room for common ground at the end of the day. After all, that’s what the American people sent us here to do.

There are more than 11 million people living in this country without documentation. We would not be able to remove them all even if we wanted to try – and we shouldn’t try. Some of these individuals are young adults brought here as children with no choice of their own in the matter. They are American in every way, except on paper. Others are productive and law-abiding parents of U.S. citizens or legal residents who have lived here for decades.

Allowing these folks who live in our communities to work legally and pay full taxes will be good for both our economy and for our federal budget. In fact, the Council of Economic Advisers estimated that these new Administration initiatives, along with other immigration policies announced in November, would increase our nation’s gross domestic product by \$90 billion over

the next 10 years. These changes would also lead to a decrease in federal deficits by somewhere between \$25 billion and \$60 billion over the next 10 years.

Blocking or repealing the Administration's initiatives would take us backwards. In fact, just last week, the Congressional Budget Office reported that the House bill to block these deferred deportation programs that the Senate declined to take up and consider yesterday would cost our economy \$7.5 billion over ten years.

Estimates indicate that more than 4 million immigrants will be eligible for the temporary deportation relief outlined by the President. While not all of those eligible are expected to apply, many will, and that will allow the Administration to focus its limited enforcement resources on the highest priorities for removal – those who pose security risks or recent arrivals without longstanding ties to our country. That is more than enough work for our border security and immigration enforcement officials to handle – even at the record deportation levels we have seen in recent years.

So, in sum, based on what we know so far, I have come to the conclusion that the initiatives whose implementation we're examining today are feasible, are fair, make good economic sense, and actually enhance our nation's security. Whether you agree with that or not, these initiatives are interim steps. They are not final steps. Those are the ones we need to take by doing the hard work of rebuilding the consensus that allowed two-thirds of the Senate to support compromise immigration reform legislation some two years ago.

As I close, let me thank the Chairman for calling this hearing. While there is considerable disagreement about what the President has done, I hope we can all agree that this hearing is the proper forum to have a debate on immigration policy.

I do not believe we should be threatening to shut down the Department of Homeland Security – an agency vital to our nation's security – over disagreements with the President's policies. All three former Homeland Security secretaries – two of them Republicans, one of them a Democrat – agree with me on that point.

In the next several days, I hope that most of us can come together to do what I believe is the right thing – support the passage of a clean, full-year appropriation for the Department of Homeland Security by February 27th and then get to work to pass a thoughtful, comprehensive immigration reform bill that is worthy of this body in which all of us are privileged to serve.

Testimony to the Senate Committee on Homeland Security and Governmental Affairs

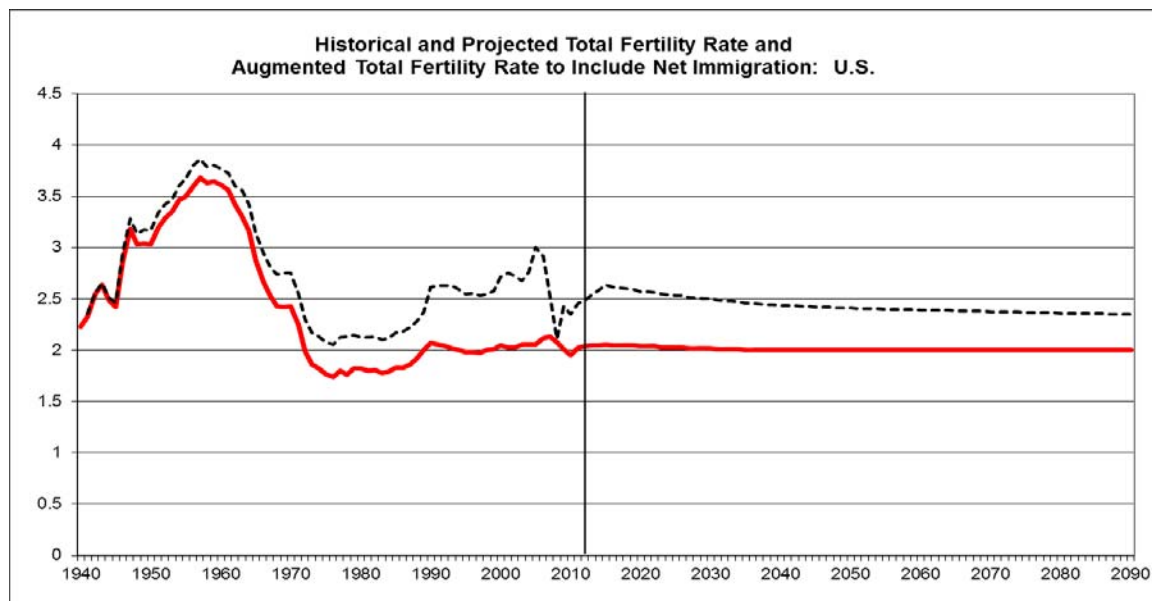
“Financial Implications for the Social Security Trust Funds of the President’s Executive Actions on Immigration, Announced November 20, 2014”

Stephen C. Goss, Chief Actuary, Social Security Administration
February 4, 2015

Chairman Johnson, Ranking Member Carper, and members of the committee, thank you very much for the invitation to speak to you today on this very important subject. Immigration is a major factor in the evolution of the United States population. The recently announced executive actions, including an expansion of the 2012 Deferred Action for Childhood Arrivals (DACA) and the new Deferred Action for Parental Accountability (DAPA), will have significant effects on the population, the economy, and the finances of the Social Security Trust Funds.

Background

Immigration has played a fundamental role in the growth and evolution of the U.S. population and will continue to do so in the future. In the 2014 Trustees Report to Congress, we projected that net annual immigration will add about 1 million people annually to our population. With the number of annual births at about 4 million, the net immigration will have a substantial effect on population growth and on the age distribution of the population. Without this net immigration, the effects of the drop in birth rates after 1965 would be much more severe for the finances of Social Security, Medicare, and for retirement plans in general. Because immigrants into the U.S. are generally young, they increase the ratio of working age population to retirement age population in much the same way as do births.



The solid line in the figure above is the total fertility rate, the average number of children that women have in a lifetime. The dashed line adds net immigrants as if they were U.S. births.

The Office of the Chief Actuary developed long-term projections of the U.S. population starting even before enactment of the Social Security Act in 1935. These population projections are fundamental to the assessment of the actuarial status of the Social Security and Medicare Trust Funds. Our population projections are also used for the long-term extensions of estimates in the President's Budget.

In addition to projecting the U.S. population, we also project the level of economic activity and earned income under the assumptions agreed upon by the Social Security and Medicare Boards of Trustees. From these projections, we develop estimates of the future workers who will pay payroll taxes to Social Security, the number of workers who will become insured under the program and then receive benefits, and the programs' cash flows (tax revenue and program costs) and resulting growth in the level of the programs' Trust Fund reserves.

We have developed estimates for the Congress on proposals to alter immigration laws and regulations, and their interpretation, in the context of comprehensive immigration reform. We provided estimates for S. 2611 on June 24, 2006 at the request of Senator Grassley. We provided estimates for S. 1348 and S. 1639 on June 27, 2007 at the request of Senator Kennedy. More recently, we provided estimates at the request of Senator Rubio for S. 744 as introduced on May 8, 2013 and as passed by the Senate on June 28, 2013.

The estimates for the President's recent executive actions that we provided at the request of Chairman Johnson earlier this week illustrate the more limited nature of these actions, compared to previous comprehensive immigration reform bills. These actions provide the opportunity to seek deferred action and legal work authorization for only about one-third of the current undocumented/unauthorized population in the country, and only a very limited increase in the number of individuals who will be able to enter the country as legal permanent residents. The balance of my testimony will provide a summary of the effects estimated by our team in the Office of the Chief Actuary for the November 20, 2014 executive actions. For more detail on these estimates, please refer to my letter to Chairman Johnson dated February 2, 2015.

Financial Implications for the National Economy

We assume that individuals who are in the U.S. without documentation or who have overstayed visas work at the same rate as the rest of the population at any age and gender. Thus, increased employment in the national economy and the increase in GDP are closely related to the increase in the population itself. By 2024, we estimate an increase in the population of 359,000 individuals, with 248,000 additional employed workers, due to the 2014 executive actions. This increase in employed workers yields GDP that is elevated by 0.15 percent. By 2050, as the population ages, we project 408,000 additional employed workers, or less than half of the 922,000 increase in population. In 2050, we project that GDP will be increased by about 0.22 percent due to the 2014 executive actions.

Financial Implications for the Social Security Trust Funds

We estimate that the long term actuarial balance for the combined Old-Age and Survivors Insurance (OASI) and Disability Insurance (DI) Trust Funds will be improved slightly by the 2014 executive actions, reducing the current-law actuarial deficit by 0.01 percent of payroll. The

annual effects on cash flow will depend on the effects on the population. The net annual cash flow (tax income less cost) for the combined trust funds will be increased for 2015 through 2045 (when the individuals granted work status are still at working ages), then reduced for 2046 through 2082 (as the additional legal workers begin to approach benefit eligibility age), and essentially neutral thereafter. On a cumulative basis, however, the net effect on the combined OASI and DI Trust Funds will be a small positive for the next 75 years as a whole.

By 2024, we project that 925,000 additional workers will be paying payroll taxes. This increase comes from the increase in workers in the national economy mentioned above, plus individuals in the informal economy who will enter the formal economy and pay taxes. The number of added workers paying payroll taxes is fairly stable from 2024 through 2050, at around 1 million.

Components of the 2014 Executive Actions for Immigration

The executive actions will affect both (1) the population of legal permanent residents and citizens and (2) the “other than legal permanent resident” population, which includes residents with temporary visas, residents who have overstayed such visas, residents who have never been authorized or documented, and those who have been or will be granted temporary deferred status under DACA or DAPA.

The 2014 executive actions will have two substantial effects on the population of legal permanent residents and citizens in the U.S. First, the actions are expected to grant legal permanent resident status to 10,000 additional entrepreneurs annually starting this year. We estimate that this provision will add 249,000 individuals to our population for 2050, and more in subsequent years. Second, the net increase in population of childbearing age from all provisions in the executive actions will result in more children born here as citizens. Over time, we project the added citizens will rise to 85,000 individuals for 2050 and will continue to grow thereafter.

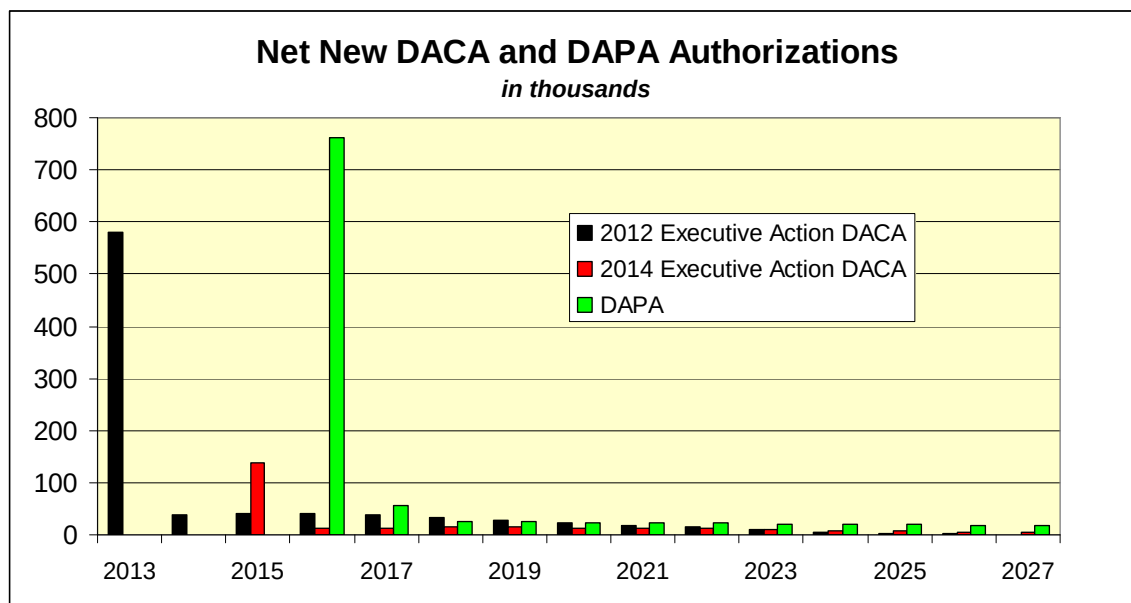
For the current and potential other than legal permanent resident population, the 2014 executive actions will have several important effects, which include the following:

1. Increased border security will reduce the number of individuals who will attempt to and succeed in entering the country without authorization. We project that these measures will decrease the number of undocumented residents by about 1.1 million by 2050.
2. Emphasis on enforcement and removal of undocumented residents in the country will focus more on individuals who pose security and other threats, rather than on individuals who have overstayed visas or entered the country without authorization and have not committed crimes or posed any threat. We project that this reorientation will make visa overstayers and undocumented residents less likely to leave the country, and, as a result, we will have about 1.2 million additional other-than-legal-permanent residents in 2050.
3. Expansion of DACA beyond the 2012 provision makes all children who arrived in the country under age 16 prior to January 1, 2010 eligible for deferred action. We estimate that there will be 234,000 new DACA-authorized individuals by the end of 2024 as a result of the 2014 DACA expansion, in addition to over 700,000 DACA-authorized individuals from the 2012 action. By 2050, we project the DACA-authorized residents will be 267,000 under the new 2013 expansion in addition to the 560,000 under the original 2012 provision.

4. DAPA authorization will affect more individuals than the DACA expansions. We estimate that about 40 percent of the roughly 3.4 million potentially eligible parents will apply and become authorized for DAPA status at some point.
5. Granting extended visas for relatives of legal permanent residents who are awaiting legal permanent resident status and for those receiving *optional practical training* in the fields of science, technology, engineering, and math is expected to increase the number of U.S. residents by about 143,000 in 2024 and thereafter. Currently, some relatives are required to leave their families and the country for several years in order to be able to apply for legal permanent resident status.
6. Undocumented spouses of H-1B visa holders will be allowed to apply for legal work authorization for the duration of their stay. This provision will increase employment but not the population.

The size of the effects of the first two provisions, those largely affecting the numbers of undocumented residents entering or leaving the country, are particularly uncertain. The precise nature of the actions to be taken are not yet well specified. However, because these effects are closely related, we believe that their effects will be largely offsetting as indicated by our estimates.

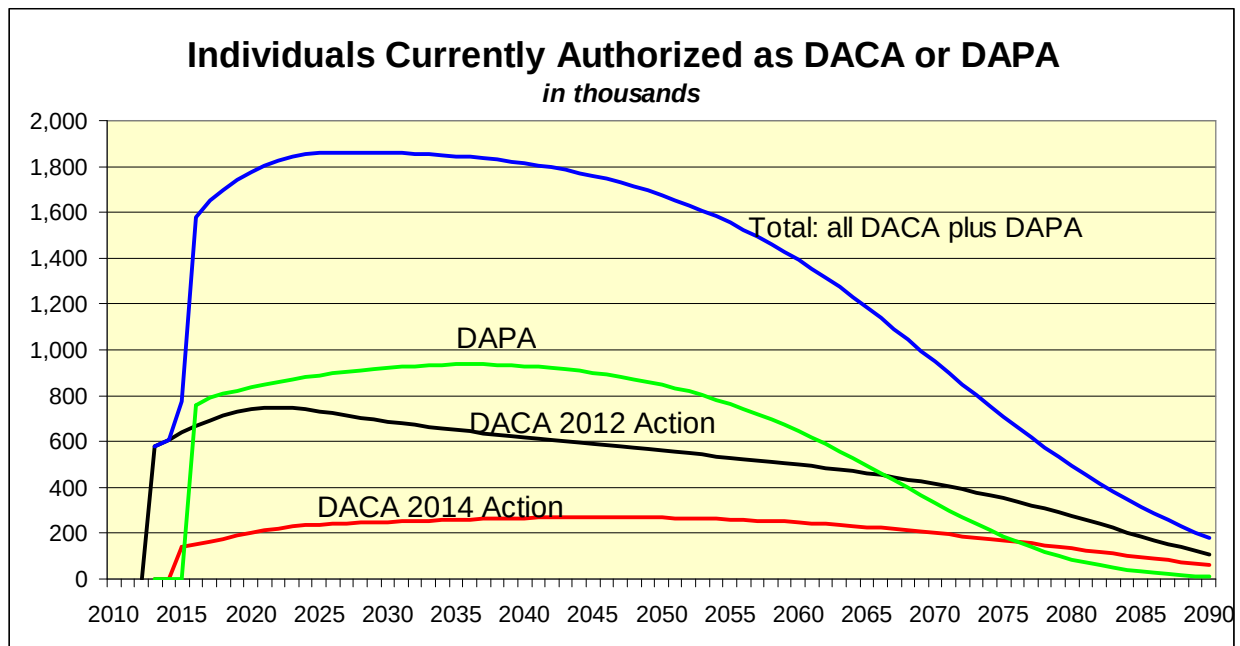
The largest effect of the executive actions for individuals who are currently undocumented or have overstayed a visa is the opportunity to pursue DACA or DAPA status and thereby gain legal work authorization. These individuals will be able to reapply for deferred action every 3 years, as long as they continue to meet the qualifications and do not pose a security threat. The additional individuals entering the formal economy and paying taxes will have positive effects on payroll tax revenue for several decades, followed by decades where these individuals will be past working ages and will receive earned benefits from Social Security.



Based on discussions with DHS, we have assumed that the numbers of individuals applying for and being granted authorization for DACA and DAPA status (1) were large in 2013 for the 2012 DACA action, (2) will be large in 2015 for the 2014 DACA expansion and (3) will be large in

2016 for DAPA. The numbers in the figure above represent the net new approvals for each category. New first time approvals are offset by a small number of individuals who were approved earlier but are not approved on a subsequent reapplication.

The accumulated number or “stock” of individuals who are authorized for each DACA or DAPA status rises abruptly with initial approvals, but then declines over the next few decades as the individuals qualifying gradually age.



As we approach the end of the 75-year projection period, the total number of individuals authorized for DACA and DAPA status diminish, illustrating the temporary effect of granting legal status to a closed group of individuals.

Again, thank you very much for the opportunity to share this information with you. I will be happy to answer any questions you may have.



SOCIAL SECURITY

Office of the Chief Actuary

February 2, 2015

The Honorable Ron Johnson
Chairman, Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Johnson:

I am writing in response to your request for estimates of the financial effects on Social Security of the President's Executive Actions for immigration announced November 20, 2014. The preliminary estimates and analysis provided in this letter reflect our careful analysis to date of these complex provisions. We received valuable assistance in interpreting these executive actions from Office of Management and Budget (OMB), the Department of Homeland Security (DHS), and the Council of Economic Advisors (CEA). These estimates provide expected numbers of individuals approved under or otherwise affected by the specified actions, the effects on gross domestic product (GDP) and employment in the U.S. economy, the effects on workers covered by Social Security who make payroll tax contributions to the Old-Age and Survivors Insurance (OASI) and the Disability Insurance (DI) Trust Funds, the effects on numbers of OASDI beneficiaries, and the change in OASDI tax income and program cost. We based these estimates on the intermediate assumptions of the 2014 Trustees Report and on information provided by DHS and other sources in December 2014 regarding populations potentially affected and likely timing of implementation. These specifications are evolving and so are subject to possible modification in the future.

The enclosed Table 1 provides our estimates of the change in the 75-year long range OASDI actuarial balance and the annual cost and income rates for the OASDI program (expressed as a percent of the present law taxable payroll), as well as the level of combined OASI and DI Trust Fund reserves expressed as a percent of annual program cost. The 2014 executive actions increase (improve) the OASDI long range actuarial balance by 0.01 percent of taxable payroll. The annual balance (difference between the annual income rate and the annual cost rate) is increased slightly for 2015 through 2045, reduced slightly for 2046 through 2082, and has a negligible effect from 2083 through 2090. While the executive actions do not change the year the combined trust fund reserves would become depleted, the projected depletion would occur later in the year 2033 (by about 3 months) because the reserves at the beginning of the year are increased from 2 percent of annual program cost under the 2014 Trustees Report to 7 percent when we include the 2014 executive actions.

The pattern of increased annual balance (improved net annual cash flow) through 2045, followed by 37 years of reduced annual balance, is the result of the major factors in the executive actions: providing legal work authorization to many younger children and their parents in the current population, who will pay additional taxes for several decades, followed by the period in which they will receive the benefits they have earned based on the taxes paid in their working years.

Enclosed Tables A1, A2, and B provide extensive detail on our projections for the 2014 executive actions. Tables A1 and A2 show projected increases starting in 2015 for the numbers of both (1) legal permanent residents and citizens and (2) the resident population that is other than: legal permanent residents and citizens. Table B provides the separate components of each of these increases in the population. Tables A1 and A2 also show that we project additional revenue from payroll tax and taxation of benefits of about \$35 billion through 2024, with very little additional program cost over the same period. Including the additional interest earned by the trust funds (not shown in these tables), the projected increase in the combined OASI and DI Trust Fund reserves through the end of 2024 is estimated to be about \$41 billion. A fuller description of the projected effects on the population, the economy, and OASDI program cash flows shown in these tables is provided below.

The estimates presented reflect extensive efforts in modeling and modifying the present-law baseline estimates issued 2014 Trustees Report long-range projections, under the direction of Deputy Chief Actuary Alice Wade. New population projections were developed by Michael Morris, Tiffany Bosley, Mark Bye, Felicitie Bell, and Danielle Huston. New economic and revenue projections were developed by Bob Weathers, Pat Skirvin, Sven Sinclair, Drew Sawyer, Mike Miller, Tony Cheng, Karen Smith, and Bill Piet. New beneficiary, benefit, and trust fund operation estimates were developed by Jason Schultz, Rob Baldwin, Katie Sutton, Johanna Maleh, Christopher Chaplain, Dan Nickerson, Michael Clingman, Sharon Chu, and Kyle Burkhalter.

Executive Actions Effects on U.S. Resident Population

- 1) **Enhance border security.** We estimate that changes based on this provision will reduce the number of individuals entering the country without documentation by about 50,000 per year starting in 2016. The reduction in the resident population that is undocumented due to this provision is estimated to reach 1.1 million by 2050. See Table B, column (5).
- 2) **Focus efforts more heavily on identifying and deporting undocumented residents who represent threats to national security, border security, and public safety.** We estimate that this change in priorities will initially reduce by about 30,000 per year emigration by individuals who have entered the country without documentation, or have overstayed a temporary visa. This reduction in emigration rate for undocumented residents is assumed to increase somewhat after about 10 years based on a growing understanding of the changes in prioritization under these actions. The resulting increase in the resident population due to this provision is estimated to reach nearly 1.2 million by 2050. See Table B, column (4).

- 3) **Expand the Deferred Action for Childhood Arrivals (DACA)** executive action of 2012 by (a) extending the date of entry requirement (date prior to which entry into the country under age 16 is required) from June 15, 2007 to January 1, 2010, making such individuals eligible regardless of their current age, and (b) extending the DACA renewal authorization from 2 to 3 years.
- The estimated numbers of residents with approval under the 2012 DACA action for years 2013 and later are shown in Table B, column (9). The net approvals for each year (new approvals less those not obtaining reauthorization) are shown in Table B, column (12).
 - The estimated numbers of additional residents with approval under the 2014 DACA executive action for years 2015 and later are shown in Table B, column (10). In column (13) we show the additional net approvals based on the 2014 DACA executive action. We assume that individuals in DACA status will be able to periodically apply to extend their status, even indefinitely, but that DACA status is not a “path to citizenship.”
 - We assume that a small number of individuals will newly apply for this status each year after 2015, for many years into the future, and that this will be partly offset by a small number of individuals who will not have their DACA status renewed based on security, and other, considerations. We estimate that the 2014 DACA extension will increase the number of residents with current DACA status by 267,000 for 2050, and that this number will diminish thereafter as they age. See Table B, column (10).
 - We estimate that the DACA changes in the 2014 executive actions will result in reduced emigration for those qualifying, increasing the resident population by nearly 100,000 by 2050, but declining thereafter as this group ages. See Table B, column (7).
- 4) **Establish the Deferred Action for Parental Accountability (DAPA) program** to allow legal work authorization for parents who (a) have a child that is a citizen or a legal permanent resident and (b) have been present in the country since January 1, 2010. Like DACA, this temporary authorization will be potentially renewable indefinitely. We estimate that roughly 1.4 million of those currently eligible to apply for DAPA will apply in 2015 or later and will be approved in 2016 or later. The total number of residents with approved DAPA status in the population is projected to rise to 935,000 for 2035 and to decline thereafter as they age. See Table B, column (11). We estimate that this provision will result in reduced emigration for approved individuals, increasing the resident population by 282,000 for 2050, but declining thereafter as this group ages. See Table B, column (6).
- 5) **Allow an additional 10,000 entrepreneurs to enter the country annually as legal permanent residents.** The number of additional U.S. residents admitted under this provision, net of subsequent emigration from this group, is projected to reach 249,000 in 2050 and to rise gradually thereafter. See Table B, column (1).
- 6) **Allow undocumented spouses of H-1B visa holders to apply for legal work authorization.** This provision is expected to increase the number of workers in the economy, and the number who pay taxes, but not to significantly affect the size of the resident population.

- 7) **Allow extended stay for some nonimmigrant visa holders.** Affected nonimmigrants include those who are relatives of legal permanent residents and are waiting to apply for legal permanent resident status, and those who are receiving *optional practical training* in the fields of science, technology, engineering, and mathematics (STEM). This provision is estimated to increase the total resident population by about 143,000 for 2024 and thereafter. See Table B, column (3).
- 8) **Additional births.** With a net increase in resident population at childbearing ages based on the provisions described above, we estimate a further increase in population due to additional births in the U.S., reaching 85,000 by 2050 and increasing thereafter. See Table B, column (2).

Overall, we estimate that the effect of the provisions of the 2014 executive actions will increase the total resident population by about 900,000 persons for 2050 and thereafter. See Table B, column (8).

Executive Actions Effects on the General U.S. Economy and Social Security

Total employment in the U.S economy is projected to increase by 248,000 for 2024 and by over 400,000 for 2050. As a result, total GDP is projected to increase by \$43 billion for 2024, an increase of 0.15 percent over the projected GDP in the absence of the 2014 executive actions. For years 2040 through 2045, GDP is projected to be elevated by 0.23 percent. Thereafter, the increase in GDP due to the 2014 executive actions declines as the large number of DACA and DAPA workers age. See Tables A1 and A2, columns (4) and (5).

Workers covered under Social Security and making payroll tax contributions are projected to increase by 925,000, or by 0.51 percent for 2024, rising to 0.57 percent for 2035. Thereafter, the increase in covered workers paying taxes due to the executive actions declines as the large number of DACA and DAPA workers age. See Tables A1 and A2, column (6).

The additional OASDI covered workers described above are projected to increase payroll tax revenue by 0.42 percent, or by \$5.4 billion, for 2024. The 2014 executive actions are projected to increase OASDI payroll tax revenue by 0.49 percent for 2035, with smaller increases thereafter. See Tables A1 and A2, column (8).

The increase in OASDI covered workers starting in 2015 due to the executive actions will also result in additional individuals gaining insured status for benefits from Social Security. For 2024, we estimate that the additional number of individuals receiving a benefit from Social Security as a result of the 2014 executive actions will be just 16,000, increasing the total number of beneficiaries by 0.02 percent. By 2050, we project the increase in beneficiaries due to the executive actions will rise to about 0.76 percent, and will decline thereafter as the affected populations age. See Tables A1 and A2, column (7). The change in OASDI cost is estimated to be negligible for 2024. However, the increase in overall program cost is projected to reach 0.50 percent for 2055, and to decrease thereafter. See Tables A1 and A2, column (10).

The increase in OASDI benefits paid as a result of the 2014 executive actions will increase the amount of revenue from taxing benefits that is deposited in the Trust Funds by a similar percentage. See Tables A1 and A2, column (9).

We hope these estimates will be helpful. Please let me know if we may provide further assistance.

Sincerely,

A handwritten signature in black ink, reading "Stephen C. Goss". The signature is written in a cursive, flowing style.

Stephen C. Goss
Chief Actuary

Enclosures

Table 1 - OASDI Cost Rate, Income Rate, Annual Balance, and Trust Fund Ratio

Effect of 2014 Executive Actions for Immigration announced November 20, 2014.

Proposal					Change from Present Law		
Expressed as a percentage of present-law taxable payroll					Expressed as a percentage of present-law taxable payroll		
		Income	Annual	Trust Fund			Annual
Year	Cost Rate	Rate	Balance	Ratio	Cost Rate	Rate	Balance
				1-1-year			
2014	13.95	12.67	-1.29	320	0.00	0.00	0.00
2015	13.97	12.92	-1.05	306	0.00	0.00	0.00
2016	13.97	12.91	-1.05	292	0.00	0.02	0.02
2017	13.97	12.95	-1.02	277	0.00	0.04	0.04
2018	14.02	12.98	-1.04	263	0.00	0.04	0.04
2019	14.15	12.99	-1.16	249	0.00	0.04	0.04
2020	14.33	13.01	-1.32	234	0.00	0.05	0.05
2021	14.50	13.03	-1.47	220	0.00	0.05	0.05
2022	14.74	13.06	-1.68	205	0.00	0.05	0.05
2023	15.00	13.08	-1.92	189	0.00	0.05	0.05
2024	15.28	13.10	-2.17	173	0.00	0.05	0.05
2025	15.54	13.12	-2.42	157	0.00	0.05	0.05
2026	15.79	13.14	-2.65	140	0.00	0.06	0.05
2027	16.03	13.16	-2.87	122	0.00	0.06	0.06
2028	16.25	13.18	-3.07	105	0.00	0.06	0.06
2029	16.44	13.19	-3.25	87	0.00	0.06	0.06
2030	16.61	13.21	-3.40	68	0.00	0.06	0.06
2031	16.75	13.22	-3.53	48	0.00	0.06	0.06
2032	16.87	13.23	-3.64	28	0.01	0.06	0.05
2033	16.96	13.23	-3.73	7	0.01	0.06	0.05
2034	17.04	13.24	-3.80	----	0.01	0.06	0.05
2035	17.10	13.25	-3.85	----	0.01	0.06	0.05
2036	17.14	13.25	-3.89	----	0.01	0.06	0.05
2037	17.16	13.25	-3.90	----	0.02	0.06	0.04
2038	17.16	13.26	-3.90	----	0.02	0.06	0.04
2039	17.14	13.26	-3.88	----	0.02	0.06	0.04
2040	17.11	13.26	-3.86	----	0.03	0.06	0.03
2041	17.08	13.26	-3.82	----	0.03	0.06	0.03
2042	17.05	13.26	-3.79	----	0.04	0.06	0.02
2043	17.02	13.25	-3.77	----	0.04	0.06	0.01
2044	17.01	13.25	-3.75	----	0.05	0.06	0.01
2045	17.00	13.25	-3.74	----	0.06	0.06	0.00
2046	16.99	13.25	-3.74	----	0.06	0.06	-0.01
2047	16.98	13.25	-3.73	----	0.07	0.05	-0.01
2048	16.98	13.25	-3.72	----	0.07	0.05	-0.02
2049	16.97	13.25	-3.72	----	0.08	0.05	-0.02
2050	16.97	13.25	-3.72	----	0.08	0.05	-0.03
2051	16.98	13.25	-3.72	----	0.08	0.05	-0.03
2052	17.00	13.25	-3.74	----	0.08	0.05	-0.03
2053	17.02	13.26	-3.77	----	0.08	0.05	-0.04
2054	17.06	13.26	-3.80	----	0.09	0.05	-0.04
2055	17.10	13.26	-3.84	----	0.09	0.05	-0.04
2056	17.15	13.26	-3.88	----	0.09	0.05	-0.04
2057	17.20	13.27	-3.93	----	0.08	0.05	-0.04
2058	17.24	13.27	-3.98	----	0.08	0.05	-0.04
2059	17.29	13.27	-4.02	----	0.08	0.04	-0.04
2060	17.34	13.27	-4.07	----	0.08	0.04	-0.04
2061	17.39	13.28	-4.11	----	0.08	0.04	-0.04
2062	17.43	13.28	-4.15	----	0.08	0.04	-0.04
2063	17.48	13.28	-4.20	----	0.08	0.04	-0.04
2064	17.52	13.28	-4.24	----	0.08	0.04	-0.04
2065	17.57	13.29	-4.28	----	0.07	0.04	-0.03
2066	17.62	13.29	-4.33	----	0.07	0.04	-0.03
2067	17.67	13.29	-4.38	----	0.07	0.04	-0.03
2068	17.71	13.29	-4.42	----	0.07	0.04	-0.03
2069	17.76	13.30	-4.46	----	0.07	0.04	-0.03
2070	17.80	13.30	-4.50	----	0.06	0.04	-0.03
2071	17.84	13.30	-4.54	----	0.06	0.04	-0.02
2072	17.88	13.30	-4.57	----	0.06	0.04	-0.02
2073	17.90	13.30	-4.60	----	0.06	0.04	-0.02
2074	17.92	13.31	-4.61	----	0.05	0.04	-0.02
2075	17.93	13.31	-4.63	----	0.05	0.03	-0.02
2076	17.94	13.31	-4.63	----	0.05	0.03	-0.01
2077	17.94	13.31	-4.63	----	0.05	0.03	-0.01
2078	17.94	13.31	-4.63	----	0.04	0.03	-0.01
2079	17.94	13.31	-4.63	----	0.04	0.03	-0.01
2080	17.94	13.31	-4.64	----	0.04	0.03	-0.01
2081	17.95	13.31	-4.65	----	0.04	0.03	-0.01
2082	17.97	13.31	-4.67	----	0.04	0.03	-0.01
2083	18.00	13.31	-4.69	----	0.04	0.03	0.00
2084	18.04	13.31	-4.73	----	0.04	0.03	0.00
2085	18.08	13.31	-4.77	----	0.04	0.03	0.00
2086	18.12	13.31	-4.81	----	0.03	0.03	0.00
2087	18.17	13.32	-4.86	----	0.03	0.03	0.00
2088	18.22	13.32	-4.90	----	0.03	0.03	0.00
2089	18.28	13.32	-4.95	----	0.03	0.03	0.00

Summarized Rates: OASDI

			Actuarial	Year of reserve
	Cost Rate	Income Rate	Balance	depletion ¹
2014 - 2088	16.81%	13.94%	-2.87%	2033

Summarized Rates: OASDI

		Change in
Change in	Change in	Actuarial
Cost rate	Income Rate	Balance
0.04%	0.05%	0.01%

Based on Intermediate Assumptions of the 2014 Trustees Report

¹ Under present law the year of Trust Fund reserve depletion is 2033

Table A1: Changes Due to 2014 Executive Actions, Changes from Estimates under the Intermediate Assumptions of the 2014 Trustees Report

Calendar Year	U.S. Resident Population at End of Year (in thousands)			U.S. Employment and GDP		OASDI Covered Workers and Beneficiaries (in thousands)		Annual OASDI Tax Income and Cost (in billions of \$)		
	Legal Permanent Residents and Citizens	Other Than: Legal Permanent Residents and Citizens	Total	U.S. Employment <i>average weekly</i> (in thousands)	Nominal GDP (in billions of \$)	Covered Workers-- <i>at any time during the year</i>	Beneficiaries at End of Year	Payroll Tax Revenue	Revenue from Taxation of Benefits	Cost
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
2015	9	96	105	35	4	58	0	0.2	0.0	0.0
2016	19	130	149	90	11	394	0	1.6	0.0	0.0
2017	30	152	183	124	16	693	1	3.0	0.0	0.0
2018	42	165	207	146	20	730	2	3.4	0.0	0.0
2019	53	176	229	164	23	762	3	3.3	0.0	0.0
2020	65	189	254	181	27	803	5	4.0	0.0	0.0
2021	76	203	279	198	30	837	6	4.4	0.0	0.0
2022	87	218	306	216	34	870	9	4.3	0.0	0.0
2023	99	234	332	232	38	898	12	5.0	0.0	0.0
2024	110	249	359	248	43	925	16	5.4	0.0	0.0
	Total Dollar Change for 2015-24:				247			34.7	0.0	0.1
2025	121	265	386	265		951	20			
2030	172	346	518	335		1,041	92			
2035	217	422	639	385		1,088	201			
2040	257	491	748	414		1,090	367			
2045	295	547	842	418		1,043	575			
2050	334	588	922	408		970	690			
2055	372	609	981	395		891	695			
2060	407	603	1,009	381		822	637			
2065	436	569	1,005	371		767	550			
2070	460	515	976	365		728	447			
2075	482	460	943	364		701	349			
2080	502	419	920	363		684	276			
2085	519	392	911	361		674	230			
2090	531	377	908	358		665	209			

Office of the Chief Actuary, Social Security Administration
February 2, 2015

Table A2: Percent Changes Due to 2014 Executive Actions, Changes from Estimates under the Intermediate Assumptions of the 2014 Trustees Report

Calendar Year	U.S. Resident Population at End of Year			U.S. Employment and GDP		OASDI Covered Workers and Beneficiaries		Annual OASDI Tax Income and Cost		
	<i>Percent Change</i>			<i>Percent Change</i>		<i>Percent Change</i>		<i>Percent Change</i>		
	Legal Permanent Residents and Citizens	Other Than: Legal Permanent Residents and Citizens	Total	Total U.S. Employment	GDP	Workers at Any Time During the Year	Beneficiaries at End of Year	Payroll Tax Revenue	Revenue from Taxation of Benefits	Cost
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
2015	0.00	0.66	0.03	0.02	0.02	0.03	0.00	0.03	0.00	0.00
2016	0.01	0.86	0.05	0.06	0.06	0.23	0.00	0.19	0.00	0.00
2017	0.01	0.97	0.05	0.08	0.08	0.40	0.00	0.33	0.01	0.00
2018	0.01	1.01	0.06	0.09	0.09	0.42	0.00	0.35	0.00	0.00
2019	0.02	1.04	0.07	0.11	0.10	0.43	0.00	0.33	0.00	0.00
2020	0.02	1.08	0.07	0.12	0.11	0.45	0.01	0.38	0.00	0.00
2021	0.02	1.13	0.08	0.12	0.12	0.47	0.01	0.39	0.00	0.00
2022	0.03	1.18	0.09	0.14	0.13	0.48	0.01	0.37	0.00	0.00
2023	0.03	1.24	0.09	0.14	0.14	0.49	0.01	0.41	0.00	0.00
2024	0.03	1.30	0.10	0.15	0.15	0.51	0.02	0.42	0.00	0.00
2025	0.04	1.36	0.11	0.16	0.16	0.52	0.02	0.43	0.00	0.00
2030	0.05	1.64	0.14	0.20	0.20	0.56	0.10	0.47	0.01	0.02
2035	0.06	1.89	0.17	0.23	0.22	0.57	0.22	0.49	0.05	0.06
2040	0.07	2.09	0.19	0.24	0.23	0.56	0.41	0.47	0.13	0.15
2045	0.08	2.25	0.21	0.23	0.23	0.52	0.64	0.43	0.32	0.33
2050	0.09	2.34	0.22	0.22	0.22	0.47	0.76	0.39	0.49	0.47
2055	0.09	2.36	0.23	0.21	0.21	0.42	0.76	0.35	0.53	0.50
2060	0.10	2.30	0.23	0.20	0.20	0.38	0.69	0.32	0.50	0.47
2065	0.11	2.14	0.23	0.19	0.19	0.35	0.60	0.29	0.45	0.43
2070	0.11	1.92	0.22	0.18	0.18	0.32	0.48	0.27	0.38	0.36
2075	0.11	1.70	0.20	0.18	0.18	0.30	0.38	0.26	0.30	0.29
2080	0.11	1.54	0.20	0.17	0.17	0.29	0.30	0.25	0.24	0.23
2085	0.11	1.43	0.19	0.17	0.17	0.28	0.25	0.24	0.20	0.20
2090	0.11	1.37	0.19	0.16	0.16	0.27	0.23	0.23	0.19	0.18

Table B: Demographic Changes Due to 2012 and 2014 Executive Actions, Changes from Estimates under the Intermediate Assumptions of the 2014 Trustees Report														
Calendar Year	Change in U.S. Resident Population Due to 2014 Executive Actions, at End of Year (in thousands)								Deferred Action Stocks at End of Year Numbers Approved in the Status (in thousands)			Deferred Action Net Approvals <u>1</u> / During Year (in thousands)		
	Legal Permanent Residents and Citizens		Other Than: Legal Permanent Residents and Citizens					Total	2012 Executive Action DACA	Additional in DACA- Approved Stocks Due to 2014 Executive Actions	Number with DAPA Approval in the Country Due to 2014 Executive Actions	2012 Executive Action Net DACA Approvals	Additional DACA Net Approvals Due to 2014 Executive Actions	Net DAPA Approvals Due to 2014 Executive Actions
	Increase for Additional Entrepreneurs Allowed under Executive Actions	Increase for Additional U.S. Births Resulting from the Executive Actions	Increase for Extended Stay for Additional Nonimmigrant Visas	Increase for Reduced Emigration by Unauthorized and Additional Overstayers of Nonimmigrant Visas	Change for Increased Border Security under Executive Actions	Effect of Reduced Emigration for those Approved DAPA	Effect of Reduced Emigration for those Approved DACA under the Executive Actions							
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
2013	0	0	0	0	0	0	0	0	579	0	0	579	0	0
2014	0	0	0	0	0	0	0	0	608	0	0	39	0	0
2015	8	1	12	27	0	49	8	105	638	139	0	41	139	0
2016	15	4	25	53	(50)	89	13	149	668	151	761	42	13	761
2017	23	8	39	80	(98)	115	17	183	694	163	794	38	14	55
2018	30	11	52	107	(145)	130	21	207	715	176	808	33	15	26
2019	38	15	67	134	(191)	142	25	229	731	189	822	29	15	25
2020	45	20	82	160	(235)	153	29	254	742	200	835	24	14	24
2021	52	24	97	188	(277)	163	33	279	748	211	848	18	13	23
2022	60	28	113	215	(319)	173	37	306	749	220	859	14	12	22
2023	67	32	128	242	(359)	182	41	332	747	228	870	10	10	21
2024	74	35	143	268	(398)	191	46	359	740	234	879	5	9	20
2025	82	39	143	310	(436)	199	50	386	732	238	888	3	7	20
2030	118	54	143	509	(609)	235	68	518	688	249	922	1	5	16
2035	153	64	143	697	(760)	263	80	639	651	259	935	0	4	14
2040	186	71	143	870	(891)	281	88	748	618	266	929	0	4	11
2045	218	77	143	1,030	(1,007)	288	94	842	589	269	902	0	3	9
2050	249	85	143	1,176	(1,110)	282	97	922	560	267	848	0	3	7
2055	277	95	143	1,307	(1,201)	263	97	981	530	260	764	0	2	6
2060	304	103	143	1,417	(1,282)	230	95	1,009	499	247	646	0	2	4
2065	327	109	143	1,506	(1,352)	183	90	1,005	462	227	496	0	1	3
2070	348	113	143	1,576	(1,412)	128	81	976	415	201	332	0	1	2
2075	366	116	143	1,633	(1,462)	76	70	943	352	168	186	0	1	1
2080	381	121	143	1,681	(1,501)	38	58	920	274	133	86	0	1	0
2085	393	126	143	1,721	(1,531)	16	44	911	187	96	33	0	0	0
2090	402	130	143	1,752	(1,553)	5	29	908	108	61	10	0	0	0

1/ The number of net approvals for DACA or DAPA during a year equals the number of individuals newly approved (for the first time) during the year, less the number who were previously approved, required reapproval in the current year, and failed to be approved. This excludes prior approvals who die or emigrate during the year.

Testimony of
Eileen J. O'Connor, Esq.
Partner, Pillsbury Winthrop Shaw Pittman LLP
Before the Senate Committee on Homeland Security and Governmental Affairs
Hearing on Deferred Action on Immigration: Implications and Unanswered Questions
February 4, 2015

Mr. Chairman, Ranking Member, Members of the Committee: thank you for inviting me.

I speak on my own behalf as a private citizen and not on behalf of my firm or partners or clients. I hope to bring to you some of the understanding I have gained during my decades of working with tax administration and enforcement from both within and without the government. This experience includes the six years – 2001~2007 – I was privileged to lead the honorable and dedicated men and women of the Tax Division of the United States Department of Justice.

You have called this hearing to examine the logistical, financial, and national security implications of the President's Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parental Accountability (DAPA) programs. I will address the likely consequences of those programs to federal tax administration and enforcement.

The Internal Revenue Service is charged with administering and enforcing the internal revenue laws. When enforcing the tax laws requires the involvement of a court other than the United States Tax Court, the 300 plus trial and appellate attorneys of the civil trial and criminal enforcement sections of the Justice Department's Tax Division represent the interests of the United States.

As required by the Inspector General Act, the Department of the Treasury has an Office of Inspector General, established in 1989. And, in accordance with the Internal Revenue Service Restructuring and Reform Act of 1998, Treasury also has another Inspector General, specifically authorized and obligated by law to provide independent oversight of Internal Revenue Service (IRS) activities. The office of the Treasury Inspector General for Tax Administration, most commonly called by its initials, TIGTA, is the one to which I will refer throughout as "Inspector General."

To describe the impact on tax administration and enforcement of the President's "executive actions" on immigration, we need to look at two phenomena: the Individual Tax Identification Number (ITIN), and "refundable credits."

ITIN

Non-U.S. persons with U.S.-related income are subject to the income tax, but are not eligible for social security numbers. In 1996, the IRS created the Individual Taxpayer Identification Number (ITIN) to enable it to track the tax payments and tax returns of people without social security numbers. And it began issuing these numbers to people in the United States illegally. This, together with “refundable credits,” has been a gift to criminals intent on raiding the Federal Treasury.

In 1999, the Inspector General issued its first report on IRS’s implementation of ITINs. According to the Report, although IRS developed ITINs to facilitate its processing of the tax returns of non-resident aliens who had U.S.-related income, IRS was issuing them to aliens unlawfully resident in the U.S. The report expressed serious concern about the conflict this created with the obligation of the government to enforce the immigration laws. The Report also highlighted what it referred to as revenue protection issues, noting that “providing illegal aliens with valid TINs . . . increases the potential for fraud.” According to the Report, more than 340,000 ITIN applicants had identified themselves as illegal aliens. For the 1997 tax year 180,662 tax returns were filed using ITINs. By the end of 2003, IRS had issued more than 7 million ITINs. It receives about 2 million new applications for ITINs every year, and issues almost all of them, notwithstanding fraudulent documentation, but more on that later.

“Refundable credits”

The primary source of revenues that fund the operations of our federal government is the income tax. It could be very simple, and, in principle, it is. Everything is taxable and nothing is deductible unless otherwise specified. Everything that is taxable is taxable now and everything that is deductible is deductible later, unless otherwise specified. Having determined your net taxable income (income minus allowable deductions), and applied the appropriate tax rate to reach your tax liability, you then apply any credits for which you are eligible.

Let’s pause for a moment to consider that “credit” and “refund” in the income tax context are often misnomers. When your liability is \$100 and you have already paid \$60 of it, you have a \$60 credit, so only still owe \$40. If you had already paid \$110, you would have a credit of \$110, and be owed a refund of \$10. But the earned income credit, or earned income tax credit, called in our initial- and acronym-happy tax world, the EITC, is a new creature invented by Congress: a “refundable credit.” It does not represent an amount paid in, and it can do more than wipe out your liability. It can create a “refund” of an amount you never paid as income taxes. So you can have a liability before the credit of \$400, have paid in nothing, and, with a refundable earned income tax credit of \$1,000, get a check from Uncle Sam for \$600. The same is true of the additional child tax credit (ACTC).

IRS Policy

For more than two decades, various government watchdogs have been warning IRS and Congress that refundable credits were the vehicles for massive fraud against the Federal Treasury. Early on, it was the General Accounting Office, reporting to Senator Roth in 1994 that IRS was sending checks to illegal aliens in payment of the earned income credit. Congress addressed this shortly thereafter by making a social security number a requirement of receiving the credit. That has not stopped IRS from paying it, though. And Congress did not institute the same requirement when a few years later, it enacted the additional child tax credit. So IRS makes no effort to avoid paying the ACTC to unlawful immigrants.

The law makes a social security number a requirement of eligibility to receive the earned income credit. But in 1999, the Chief Counsel's office of IRS ruled (in a non-binding, non-precedential way, but no one but the IRS pays attention to those disclaimers) that when a person receives a social security number, he can file amended returns to claim the credit for the three preceding years during which he did not. The logic is puzzling: the credit is not available if you don't have a social security number, but you can receive it retroactively for years during which you did not qualify for it because you didn't have a social security number.

Economists estimating the impact on the Federal Treasury of the "executive action" need to keep in mind that IRS will be paying three prior years' worth of refundable credits to anyone who applies for them.

They will also want to consider that, in its budget request for 2014, the IRS asked for 440 million dollars to implement the Affordable Care Act, including 306 million dollars for information technology changes required to deliver the associated tax credits. Remember, the Affordable Care Act instituted a credit that is not only refundable, but also transferrable. The person receiving it can designate to whom the IRS should pay it, generally his insurance carrier.

The Tax Gap

There is from time to time, on Capitol Hill and elsewhere in government and in newsrooms, much handwringing about the tax gap, last estimated to be 385 billion dollars per year. The tax gap is the difference between the taxes the IRS should have collected and the amount it did. Note, however, that tax gap computations do not take into account money paid out of the Treasury on fraudulent refund claims. And, as we have seen, the fraud against the Treasury using ITINs and refundable credits amounts to hundreds of billions of dollars.

Refundable credits have given rise to a cottage industry – no the big business - of fraud on the Federal Treasury. Unscrupulous tax return preparers create false Forms W-2, or alter real ones, to create enough income to qualify the person – real or imagined - for the credits. Then they file returns claiming the refunds and take a share – or divert

them altogether. Criminals file thousands of ITIN applications, and then thousands of tax returns claiming fraudulent refunds, and, as you will see in the nutshell summaries of Inspector General Reports, the Treasury pays them.

When I was head of the Justice Department's Tax Division, we shut down quite a few fraudulent return preparation operations, and the effort continues. But after-the-fact law enforcement cannot redress these crimes or recover the lost billions. The money should not be paid out of the Federal Treasury in the first place. And it is the responsibility of the Internal Revenue Service to see that it is not. But it invariably and repeatedly fails to do so.

Oath

Every state or federal employee or lawmaker swears an oath of allegiance to the Constitution of the United States of America. Article VI, Clause 3, of the Constitution requires as much. And the requirement is codified in 5 USC §3331, which provides the language of the oath.

The allegiance every government employee swears is to the Constitution, not to any person or office. Perhaps it was with their oaths in mind that, in the Spring of 2012, eleven current and former IRS employees responsible for processing ITIN applications contacted WTHR Eyewitness News in Indianapolis to report that their supervisors were requiring them to simply approve even the most suspect applications, thus creating a "massive loophole for illegal immigrants."

Apparently some of these troubled IRS employees also wrote to Congress. At the request of members of Congress, the Inspector General investigated the allegations, and determined them to be well-founded. In a July 2012 report, the Inspector General identified numerous deficiencies in IRS procedures for processing of ITIN applications, leaving the door open for widespread fraud.

This was not the first time rampant ITIN-enabled raids on the Federal Treasury had been investigated. In 2002, IRS itself established a task force to review the problem and recommend ways to stem the tide. In July 2011, the Inspector General reported that in the previous year, Treasury had paid 4.2 billion dollars in refundable credits to people not authorized to work in the United States.

Inspector General Reports

Let's take a quick look at some of the Inspector General's reports over the years, along with a couple of other relevant items:

In 2004, the General Accounting Office reported that ITINs could easily be obtained using bogus documents and used for illegal purposes.

In 2009, the Inspector General reported an increase in the use of ITINs from 530,000 in 2001 to more than 1.8 million in 2007. The report highlights also note that for 2007, “1.2 million ITIN filers received Additional Child Tax Credits of **1.8 billion dollars**,” and recommended that Congress pass legislation requiring a person claiming the ACTC to have a social security number. For 2000 to 2007 inclusive, ACTC totaling nearly 5.25 billion dollars had been paid on ITIN returns, likely with little or no verification of eligibility – i.e., the existence or U.S. residence of a qualifying child - even assuming unlawful immigrants are not ineligible.

From another 2009 report of the Inspector General, “Individual Taxpayer Identification Numbers Are Being Issued Without Sufficient Documentation” we learn that tens of thousands of ITINS had been used multiple times in the same year, resulting in hundreds of millions of dollars in refunds paid. In 2008, more than 72,000 ITINs were used on multiple tax returns that resulted in the payment of **176 million dollars** in refunds.

In 2011, the Inspector General reported that individuals not authorized to work in the United States were paid **4.2 billion dollars** in refundable credits in 2010 alone. IRS did not agree to TIGTA’s recommendation that it require additional documentation to support claims of child tax credits, notwithstanding that, for 91% of ITIN returns claiming ACTC, an examination resulted in an adjustment. But the refunds had already been issued. Additional child tax credits totaling nearly **14.25 billion dollars** were paid to illegal aliens in 2008, 2009, and 2010. IRS does not agree that this credit is not available to unlawful immigrants, and takes no steps to confirm that the child about whom the credit is claimed exists at all, or lives in the ITIN filer’s household and not in another country.

Drawing upon data in several Inspector General Reports, the Center for Immigration Studies concluded in 2011 that for the six years 2005 – 2010, inclusive, illegal immigrants collected about **7.3 billion dollars** more from the Federal Treasury than they contributed to it.

Perhaps the most damaging of all the studies of IRS’s handling of ITINs and tax returns filed using them is the Inspector General’s July 2012 report, entitled, and concluding, with the understatement typical of the TIGTA, that “Substantial Changes Are Needed To The Individual Taxpayer Identification Number Program To Detect Fraudulent Applications.” The Report concludes that IRS does not have controls over the issuance of ITINs sufficient to prevent or deter fraud. According to the Report: “In Processing Year 2011, the IRS processed more than 2.9 million ITIN tax returns resulting in tax refunds of **6.8 billion dollars**.” The report had been undertaken at the request of members of Congress, who forwarded complaints they had received from IRS employees. The employees complained that their supervisors pressured them not to carefully consider ITIN applications, but rather just to issue as many ITINs as possible as fast as possible. The Inspector General’s audit confirmed the veracity of these complaints. It discovered that IRS approved tens of thousands of ITIN applications submitted using the same address. TIGTA found 154 addresses across the U.S. for

which more than 1,000 ITINs had been issued. In 2011, IRS sent 24,000 refunds totaling **46 million dollars** to a single address in Atlanta. It paid more than **9 million dollars** in refunds to filers of nearly 3,600 refund claims from 7 addresses. Among the charts in the Report is one showing the 10 addresses most commonly used for ITIN tax refunds. For 2011, these 10 addresses accounted for

- nearly 54,000 ITIN returns claiming refunds,
- totaling more than **86 million dollars** THAT WERE ISSUED.

TIGTA found that, notwithstanding that IRS had rejected prior ITIN applications using certain addresses, it approved dozens, and in one case more than 600, ITIN applications from five addresses, and issued 739 refunds totaling **1.8 million dollars** to those addresses. TIGTA's research also confirmed that ITINs were being used for purposes other than tax reporting. It found them listed in property and vehicle ownership records and in traffic violations histories.

Later that year, then Deputy Commissioner Steve Miller responded to Rep. Boustany's inquiry following up on the Inspector General's July report about ITINs, saying steps were being taken to address the deficiencies.

In 2013, the Inspector General reported that the IRS had not complied with an Executive Order to reduce improper payments. The Report concludes that from 2003 – 2012, inclusive, IRS has paid **122 billion dollars**, give or take 11 billion dollars in EITC in error. (Remember, this does not include ACTC paid in error.)

Later that year, Sen. Sessions proposed an amendment to the budget bill to bar payment of ACTC on a tax return using an ITIN. Sen. Reid killed it.

Last year, 2014, the Inspector General issued a report entitled "Existing Compliance Processes Will Not Reduce The Billions Of Dollars In Improper Earned Income Tax Credit And Additional Child Tax Credit Payments." IRS is required by law to identify programs that present a high risk of fraud and to take action to prevent it. IRS identifies only EITC, and not ACTC, as high risk. The Inspector General concluded the two programs have similar risks of fraud, and estimated that between 25.2 and 30.5 percent – or **6.5 billion dollars**, give or take half a billion dollars - of the ACTC payments made for 2013 should not have been made. Similarly, **14.5 billion dollars** of EITC payments in 2013 were in error. For 2012, IRS paid out **63 billion dollars** in EITC and **26.6 billion dollars** in refundable ACTC.

On Monday, the Center for Immigration Studies, with information obtained under the Freedom of Information Act, reported that "more than 5.5 million new work permits were issued to aliens from 2009 to 2014, above and beyond the number of new green card and temporary worker admissions in those years."

The “executive action”

It is unfortunate that the “deferred action” eligibility requirements do not include government confirmation that the applicant has neither filed for nor received nor been party to tax or other federal benefits for which he is not eligible.

The “executive action” calls to mind Samuel Johnson’s description of second marriages: they are the triumph of hope over experience.

We know from experience that the actions upon which the Administration embarks are guaranteed to inflict substantial damage on tax administration and enforcement, and to drain even more billions of hard-earned dollars from the Federal Treasury than past follies are already costing and continue to cost.

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| <p>You can have open borders, or you can have a welfare state.<br/>You cannot have both.<br/>For long.<br/><i>Paraphrasing the late and very great Milton Friedman</i></p> |
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Testimony Before the  
**U.S. Senate Homeland Security & Governmental Affairs Committee**  
**“Deferred Action on Immigration: Implications & Unanswered Questions”**

Testimony of  
Luke Peter Bellocchi  
Of Counsel  
Wasserman, Mancini & Chang, PC  
Former  
Deputy Ombudsman for Citizenship & Immigration Services  
and  
Assistant Commissioner for Customs & Border Protection  
U.S. Department of Homeland Security

February 4, 2015  
10:00 AM  
SD-342 Dirksen Senate Office Building

**“Is U.S. Citizenship & Immigration Services Ready to  
Take on the President’s New Immigration Initiative?”**

Luke P. Bellocchi

Mr. Chairman, Ranking Member, and Committee Members: thank you for allowing me the honor of testifying before this committee, for which I was once a staff member. By way of background, I have worked on immigration law and policy since 1996, starting as an attorney advisor at the State Department, and later as a senior executive at the Department of Homeland Security (DHS) from 2007-2009. In between, I worked as a Congressional staff member on various immigration reform and border security bills in both the House and Senate. I am now a practicing immigration attorney in the private sector.

The President’s initiative to stay deportation of an estimated four to five million undocumented immigrants in the United States will greatly increase pressure on U.S. Citizenship & Immigration Services (USCIS) to handle millions of new immigration applications in the coming months of 2015. There is clearly a potential for bottlenecks to form at the intake, fee processing, data-collection, adjudication, request-for-evidence, document manufacturing stages, in corollary applications, and even perhaps at foreign consular offices (that are issuing passports and foreign official documents). At each of these bottlenecks, there may be a temptation to streamline processing or change processing priorities.

**Background on DAPA/DACA and Immigration Reform Efforts**

The President announced on November 20 of last year a program, known as Deferred Action for Parental Accountability (DAPA), that would allow an estimated five million undocumented immigrants in the United States to obtain protection from deportation and legal work authorization; it would also expand an earlier program called DACA (Deferred Action for Childhood Arrivals) which has seen 692,000 initial applications, with 610,000 approvals. Many commentaries have been made that this program including that many of those eligible for the program will not take up the offer for fear that the program will be rescinded at a later date when their location and employment might be revealed to enforcement agencies. Others have commented on whether this program usurps Constitutional and traditional Congressional authority over immigration and naturalization law and policy.

During consideration of the 2005, 2006 and 2007 comprehensive immigration bills, I was a staffer in the House and then Senate but I witnessed a monumental effort by the George W Bush administration to pass comprehensive immigration reform, to include sending two cabinet officials – Secretary of Homeland Security Chertoff and Secretary of Commerce Gutierrez – to negotiate a bill over countless hours in Senate Chambers. A similar effort is needed in working with Congress to reform our immigration system in a way that can be accepted by all sides and constitutes good long-term immigration policy. To be sure, most law-abiding immigrants have and will contribute greatly to the wealth of the nation and Congress should consider how best to handle and process immigration applications in a safe and secure manner.

Based on the President's announcement, USCIS has begun work to handle a massive surge in workload from incoming DAPA and DACA-expansion applications and DACA extensions. USCIS is slated to take in DACA-expansion cases later this month, and DAPA applications are expected to be available 180 days after the President's announcement in November (i.e., May 20, 2015). The Administration estimates that about five million individuals are eligible to apply under the DAPA and expanded-DACA program.<sup>1</sup> Various organizations, including DHS and Pew Foundation have estimated the undocumented immigrant population to be 10-12 million.<sup>2</sup> All of these are *estimates*, however, and it is impossible to know exactly how many individuals will actually apply under the program. Thus, USCIS' workload may be much greater or less than estimated, and USCIS needs to be ready for any contingency for handling the intake of initial DAPA applications as well as processing documents and security checks.

### Impact of USCIS Processing Timeliness

Talk within the immigrant community indicates some unease with applying for the program. There are questions over whether the program will continue in future years and whether their application information will be shared with law enforcement, but there is also concern that the process will not be smooth and that they and their employers may be left in a lurch. From their perspective, they may be in a relatively stable, albeit unauthorized, position with an employer, but the moment they apply for DACA or DAPA, compliance and Employment Authorization Documents (EADs) come into the picture. USCIS processing can have quite an impact on both employers and immigrants.

For employers, they must fill out I-9 forms (for employment eligibility verification) and check EADs or other documents, and comply with wage, insurance, and other requirements, which may increase their costs. That means if an EAD is not processed before expiration, there will be work stoppage. Unlike normal processing for legal employment-based immigrants, there is usually a labor certification process with the Department of Labor, which takes measures to assure that no American worker is willing and available to take positions that a foreign worker is applying to take. Since the DACA and DAPA program skips these labor market tests, the impact of millions of new workers with legal employment authorization documentation on the economy will be uncertain and processing speed for EADs could be influenced by changing economic conditions. The impact on wages and business costs becomes more unclear if USCIS cannot process DAPA and DACA cases in timely manner.

For DAPA and DACA applicants, delays in or simply lengthy USCIS processing may put them in a more-difficult position as they may not have stable employment once they enter the program. The Citizenship & Immigration Services Ombudsman held a teleconference last month

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<sup>1</sup> White House, <http://www.whitehouse.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action>. I have been given estimates from DHS officials that the expected number may be closer to 2-3 million applicants.

<sup>2</sup> Pew Research Center, Unauthorized Immigrants: 11.1 million in 2011. <http://www.pewhispanic.org/2012/12/06/unauthorized-immigrants-11-1-million-in-2011/>. See also Ruth Wasem, Congressional Research Service, "Unauthorized Aliens in the United States: Estimate Since 1986," <http://fpc.state.gov/documents/organization/39561.pdf>. Hoefer, et al, DHS, "Estimates of the Unauthorized Immigrant Population Residing in the United States," [https://www.dhs.gov/sites/default/files/publications/ois\\_ill\\_pe\\_2011.pdf](https://www.dhs.gov/sites/default/files/publications/ois_ill_pe_2011.pdf).

with immigration practitioners concerning DACA renewals; some participants revealed that a significant number of DACA applicants who were approved for EADs are not able to get reauthorized in time to keep their employment authorization current, forcing them to stop work indefinitely. Timely production and control of EADs has been an issue in the past as reported by the CIS Ombudsman in 2011.<sup>3</sup> Although USCIS is required by regulation to approve EADs within 90 days,<sup>4</sup> they have asked DACA applicants to file 120 days in advance of expiration, but are still not able to process EADs in time.<sup>5</sup> Reliable sources have informed me that USCIS actually adds 90 days EAD processing time to the end of the DACA processing, which might be more justified for an initial DACA application, but makes no sense for a DACA renewal, which will take just as long (i.e., an applicant for renewal can expect to be out of employment authorization for up to 180 days while the renewal and then EAD applications are considered one after another).<sup>6</sup> Few American employers and employees are satisfied with this result as work stoppage results in hardship for both.<sup>7</sup> I can imagine how a DACA applicant under these circumstances might feel as if the DACA (or DAPA) program is not worth it.

The addition of an estimated five million more applicants may overwhelm USCIS' ability to issue EADs in time and USCIS may consider extending the validity of EADs to keep processing under control.<sup>8</sup> In fact, almost all EADs (i.e., the employment authorization cards) are produced at one facility, and it is not clear that the facility has the physical capacity to produce that many EADs in short order.

### General Description of USCIS as an Application Processing Agency

USCIS is an organization of roughly 13,000 full-time officers and 5,000 contractors, who engage in the processing of about six million immigration benefit applications of one type or another each year. Contractors can only fulfill support functions and not actual adjudication, as that is considered an inherently governmental function. Both the number of personnel and applications changes each year, but over the past few decades, the number of both have grown

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<sup>3</sup> CIS Ombudsman, "Employment Authorization Documents," Meeting the 90 Day Mandate and Minimizing the Impact," July 18, 2011, <http://www.dhs.gov/xlibrary/assets/cisomb-employment-authorization-documents-07182011.pdf>.

<sup>4</sup> 8 CFR 274a.12.

<sup>5</sup> USCIS data for Fourth Quarter, FY2014, indicates 374,589 EAD applications are pending, [http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all\\_forms\\_performancedata\\_fy2014\\_qtr4.pdf](http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all_forms_performancedata_fy2014_qtr4.pdf)

<sup>6</sup> USCIS apparently has stopped the issuance of interim EAD documents (as it make no sense for USCIS to divert resources from approving the regular EAC) and there have been past concerns regarding fraud and security in issuing them from local USCIS offices. The Department of Justice Inspector General found "thousands of controlled employment authorization documents unaccounted for and equipment missing" and another audit found "thousands of unaccounted for certificates of naturalization." Office of Inspector General, Department of Justice, "Follow-up Inspection of the Immigration and Naturalization Service Document Fraud Records Corrections," Report Number I-2000-021, and "Document Fraud Records Corrections," Report Number, I-96-09, citing various other OIG Reports.

<sup>7</sup> CIS Ombudsman, "Employment Authorization Documents," Meeting the 90 Day Mandate and Minimizing the Impact," July 18, 2011, <http://www.dhs.gov/xlibrary/assets/cisomb-employment-authorization-documents-07182011.pdf>.

<sup>8</sup> Normally, an EAD is valid for one year, but in certain cases, EADs are issued with two years or more validity. USCIS, <http://www.uscis.gov/news/questions-and-answers/uscis-issue-employment-authorization-and-advance-parole-card-adjustment-status-applicants-questions-and-answers>.

dramatically. However, the USCIS systems and processes remain the same: it is fundamentally a labor-intensive, case-intensive, *paper*-based adjudicatory entity. That is, by-and-large, each year six million *paper* applications are taken in through the mail by USCIS, data-entered, and reviewed by officers with support from contractors. Note that most application adjudications are handled at one of four service centers that are not open to the public, but other services are handled at hundreds of local USCIS offices.

The first step in application processing is intake, which has in recent years changed somewhat for security and control purposes, but is also fundamentally a paper mail-based intake system. Once an applicant sends an application and fee to USCIS, most applications are scanned and payment taken at USCIS “lockbox” facilities. Fees fund almost all of USCIS’ \$3.2 billion budget, but all of it until recently was taken in by paper checks. In 2008, when I investigated USCIS’ “lockbox” (there are now three) where fees are collected for applications, I could not get an answer as to why USCIS refused to accept other forms of payment such as credit cards, especially as private bank executives who were present said it would be easily possible. The fact is, all applicants are required to calculate total amounts from a menu of USCIS fees and pay *the exact amount* by check – if that amount is off by even a penny (overpayment or underpayment) the check and application are rejected and sent back. At that time, the Ombudsman’s office calculated that *seven percent* of applications were mailed back, costing USCIS millions in postage and processing, but more damaging, many applicants missed deadlines to maintain their status and employers waited longer to get their employees on board. USCIS recently has made efforts to allow applicants to pay for some applications by credit card, but as the Citizenship & Immigration Services Ombudsman recently reported, the system still faces many challenges.<sup>9</sup>

In addition to credit card payments for some applications, the USCIS Transformation Office has finally set up a Web-based application system for a small handful of applications.<sup>10</sup> However, none of these applications are A to Z electronic processes, and often supporting documents and a copy of the application must still be sent in to USCIS by mail. Although the application for an EADs is one of these applications, it cannot be used in conjunction with an application for DAPA or DACA. Thus, all 692,000 previous DACA applications were paper-based applications mailed to USCIS, and as it stands, the estimated millions of DAPA and expanded-DACA applications will be accepted in this manner.

Normally, acceptance of paper applications in the mail do not face problems in intake processing, but application surges in the past have resulted in mail and applications sitting in vulnerable and exposed overflow areas and in some cases purposely destroyed.<sup>11</sup> The Transformation Office at USCIS has spent roughly \$1 billion to date and is slated to spend \$1.7 billion to get an electronic application system (now called Electronic Immigration System, ELIS) in place.<sup>12</sup> USCIS has finally set-up a small number of applications that can be entered

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<sup>9</sup> DHS CIS Ombudsman, 2014 Annual Report to Congress.

<sup>10</sup> There are currently eight USCIS applications that can be filed electronically (including I-140 Petition for Alien Worker, I-90 Application to Replace a Lost/Stolen Green Card, I-131 Application for Travel Document, I-765 Application for EAD, I-821 Application for Temporary Protected Status, I-907 Premium Processing, I-526 Alien Entrepreneur Application, I-539 Change of Status). <http://www.uscis.gov/e-filing>.

<sup>11</sup> John Broder, “INS Shredder Ended Work Backlog, U.S. Says,” The New York Times, January 31, 2003.

<sup>12</sup> GAO, “Consistent Adherence to DHS Acquisition Policy Could Help Improve Transformation Program Outcomes,” November 2011.

electronically,<sup>13</sup> but many of them still require sending in a paper copy and supporting documents. One has to wonder whether there is really an incentive for USCIS to transition to electronic processing as new systems may require a new personnel structure. Electronic-filing, through ELIS or otherwise will not be ready for DAPA and DACA intake.<sup>14</sup>

Once paper applications are taken in by USCIS, and fees accepted, most applications are sorted out and sent to one of four service centers around the country where they are adjudicated. Officers and contractors at Service Centers take applications and manually check information in the paper-application with a “Wang-era” computer database system called CLAIMS3 which serves as USCIS’ primary case management and information database concerning applications and applicants.<sup>15</sup> CLAIMS3 has almost no search functionality and provides very limited information about application numbers and case status.

Normally, once an adjudicator actually examines a paper application from the pile sitting in their cubical, the application is reviewed against a checklist of required items and requirements for the relevant type of immigration status (“visa”). Often an officer finds some deficiency or weak evidence and types up what is known as a Request for Evidence (RFE) that is sent back to the applicant. The applicant has a set amount of time to respond to the RFE or the application is rejected. Many applicants have complained about the amount and nature of RFEs as some appear to be perfunctory or sometimes nonsensical. In some cases, during the pendency of the case, an adjudicator may find an indicator of fraud, or may conduct a name check, and send the case to the USCIS anti-fraud office (called Fraud Detection & National Security Directorate, FDNS) for investigation. With or without RFE response, an adjudicator approves or rejects an application, usually within a certain target timeframe for differing application types – six months is the longest USCIS-stated target, while EADs must be done within 90 days by regulation. If the application is denied, USCIS normally sends the applicant an explanation as to why the application did not meet the relevant criteria. If an application is approved, an approval form is sent to the applicant.

For some applications, this may be all that is needed to form a basis to remain in the U.S. or work legally. For others who are waiting abroad, they must make an appointment at a U.S. Consulate or Embassy to be interviewed for an actual visa stamp. If the interviewing consular officer believes, even with the approved USCIS application, that the case is fraudulent or otherwise does not meet the criteria for a visa, the consular officer may conduct an investigation abroad and/or send the application back to USCIS for review. USCIS can reaffirm or deny the application, but many cases are simply lost in the shuffle.

### USCIS DAPA Processing and Possible Pitfalls

The regulations and guidance for DAPA have not yet been issued, but preliminary documents from the Department of Homeland Security (DHS) indicate that applicants must

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<sup>13</sup> See note 9.

<sup>14</sup> I understand that USCIS has plans to introduce a computer “wizard” program that may assist applicants in filling out DAPA and DACA applications by posing queries and inputting responses into the applications, but that ultimately the application and supporting documentation must be mailed to USCIS.

<sup>15</sup> Other types of applications, such as naturalization applications, will go into another database, CLAIMS4.

submit an application and provide proof that they have continuously resided in the U.S. since January 1, 2010, similar to the residency requirements under DACA.<sup>16</sup> To prove residence, applicants must submit utility bills, employment records, bank, school, or religious records, and affidavits. DACA applicants are required to prove identity by providing a passport, birth certificate, or “any other document with a photo.” They are also required to show their criminal record, and are barred from the program if they have been convicted of a felony, significant misdemeanor,<sup>17</sup> or three misdemeanors.<sup>18</sup> The irony of this program is that applicants must *prove that they were in the United States illegally* during this time, and USCIS was known under the DACA program to send requests for more evidence that applicants were actually in the U.S. *illegally* before the relevant date (while most of the time other applicants are trying to prove that they are legally in the U.S. and USCIS is determining whether they were actually legally here). Under DACA, applicants filled out an application, known as an I-821D, with supporting documents as just described above. DAPA applicants will have to fill out an application that is substantially similar to this.

The previous DACA application process appears on its face to have been run through USCIS without too much difficulty and without hiring significant numbers of permanent staff<sup>19</sup> to handle the 690,000 DACA applications.<sup>20</sup> However, USCIS practiced a surge tactic used in the past of diverting officers working on one type of application to concentrate on a higher-priority application – in this case DACA.<sup>21</sup> The result of this diversion of resources is not usually recognized outside of USCIS until significant backlogs of other applications are discovered and applicants begin to complain. In the case of DACA, backlogs formed for I-90 (renew/replace green cards) and I-130 (family-based green cards),<sup>22</sup> in some cases, such that processing times exceeded 12 months. Backlogs at USCIS in the past, such as in 2003-2004, have required specific appropriated backlog funds to obtain additional temporary resources.

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<sup>16</sup> Note that resided is a term that could mean someone left and reentered the country, but still intended to live in the U.S.

<sup>17</sup> This generally includes crimes involving domestic violence, sexual abuse, drug distribution, unlawful possession of a firearm, and driving under the influence. See Immigrant Legal Resource Center, [http://www.ilrc.org/files/documents/ilrc-2012-daca\\_chart\\_1.pdf](http://www.ilrc.org/files/documents/ilrc-2012-daca_chart_1.pdf).

<sup>18</sup> These bars are similar to bars used in the 1986 legalization program, Immigration Reform and Control Act of 1986. Note these are substantially different bars than are used to exclude persons abroad who wish to enter the U.S. under normal legal processing (which include bars for conviction of a crime of moral turpitude, health-related reasons, terrorism or other security concerns, likelihood to become a public charge, child abduction, intent to work without labor certification, intent to immigrate permanently, and a host of others).

<sup>19</sup> It has been reported that 900 new employees (mainly contractors) were hired in response to the increased workload from DACA. J. Gerstein, “Bureaucratic Nightmare on Immigration?” Politico, Nov 21, 2014. <http://www.politico.com/story/2014/11/immigration-action-government-implement-113108.html>.

<sup>20</sup> See latest USCIS DACA figures at: [http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA\\_fy2014\\_qtr4.pdf](http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_fy2014_qtr4.pdf), including FY2014 numbers that indicate that 32,395 applications were denied and 59,715 are pending to date.

<sup>21</sup> J. Gerstein, “Bureaucratic Nightmare on Immigration?” Nov 21, 2014. <http://www.politico.com/story/2014/11/immigration-action-government-implement-113108.html>

<sup>22</sup> See USCIS Data Sets for 2012 - 2014, <http://www.uscis.gov/tools/reports-studies/data-set-form-i-130-petition-alien-relative>. In FY2012, third quarter, USCIS had a total of 82,496 pending I-130s; in June 2013, there were 1.9 million pending I-130s; that number went down in September 2013 to 885,935 and in March 2014 to 840,017. In fourth quarter, FY2014, there were 478,121 I-90 applications pending. [http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all\\_forms\\_performancedata\\_fy2014\\_qtr4.pdf](http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all_forms_performancedata_fy2014_qtr4.pdf).

USCIS has typically shifted workload away from other types of applications to handle priority or high-profile applications, and will probably do so with the DAPA applications. Using this tactic alone will not be sufficient to meet the flood of millions of applications expected under DAPA and expanded-DACA, and the question arises whether it is fair for these other applicants to be waiting extended periods because of DAPA.

The administration has informed this Committee that it plans to hire 1000 new workers (700 of which will be new federal agents, and 300 contractors). However, questions immediately surface whether this number will be sufficient without either creating extreme backlogs in one or more applications type, or damaging the quality of application adjudications. DACA involved application numbers that are about 1/10<sup>th</sup> the estimated size of the DAPA applicant pool at five million (versus 690,000 for DACA). It is hard to see how an additional 1000 workers, even if fully trained and experienced, can make up for an additional five million applications USCIS is expected to receive – meaning each new worker would have to process and adjudicate 4500 applications within the six month target (including weekends, that would mean 25-27 applications per day for 1000 adjudicators).

Further, it is unclear how USCIS will hire 700 full time federal agents, screen them for employment and then for security clearances, train them, and deploy them in time to handle millions of new applications and meet the six-month turn-around time for each application submitted. Training new employees in the complexity of immigration law and policy is no small matter – a number of federal courts and Congressional Research Service (CRS) have likened the complexity of immigration law to that of the tax code.<sup>23</sup> The Department of Justice Inspector General discussed numerous problems with new officers' inadequate training that led to a host of problems under a program called Citizenship USA, conducted during the end of the Clinton administration. Internal sources inform me that USCIS intends to quickly hire new officers (many veterans are expected to qualify for these jobs under veterans preference and quickly be selected). Further, some retirees are expected to take the new positions, and some more seasoned officers will move over from other parts of USCIS. This may create gaps in other parts of USCIS' application processing.

#### Past Experience with Citizenship USA Program and Background Checks

Under the Citizenship USA program, USICS (then called the Immigration & Naturalization Service, INS) saw a massive increase in and prioritization of what turned out to be over one million naturalization applications from 1995 to 1996. To handle the increased workload, INS abbreviated training, from 16 weeks to one week (in some cases less than 40 hours of training), of newly hired officers.<sup>24</sup> INS at the time also requested abbreviated FBI background checks for new employees (and I have heard rumors that USCIS intends to do the same with their new hires for DAPA). Depending on the security clearance and background check type, this process currently may take an average of 53 days.<sup>25</sup> In the rush to complete over

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<sup>23</sup> Stephen Vina, Congressional Research Service, July 29, 2005.

<sup>24</sup> Department of Justice, Office of Inspector General, Report on Citizenship USA, <http://www.justice.gov/oig/special/0007/cusaimp.pdf>.

<sup>25</sup> Christensen, et al, Congressional Research Service, "Security Clearance Process: Answers to Frequently Asked Questions," September 9, 2013.

one million naturalizations, thousands of applications were incorrectly approved. Some 10,800 approvals included persons with felony records, and another 60,398 had no record of any background check at all, according to the Department of Justice. In the end, DOJ underwent a long program of trying to denaturalize many of them through court proceedings.<sup>26</sup> What happened was in part due to poor planning and coordination with FBI, which could not handle the massive upsurge in background checks, but also because of a disregard for fraud checks.

Background checks are important not only for USCIS employees but for any applicant we legalize or allow into the country as well. Those who have entered the U.S. with a visa that was issued abroad, including those who may have overstayed their visa, have undergone some background screening before entering the U.S. Those who entered the U.S. without any inspection have probably never been screened. In either case, it is incumbent on USCIS to conduct vigorous background checks on those we invite into legal status in the U.S.

However, one report last year, based on a Freedom of Information Act (FOIA) request, revealed that USCIS memorandums instructed USCIS to conduct “lean and lite” background checks, including an abbreviated TECS<sup>27</sup> check, on DACA applicants, before their applications are adjudicated, and that “biometric processing should not be refused because an applicant does not present an acceptable ID.”<sup>28</sup> Informal responses to this report indicate that DACA applicants were biometrically checked with the FBI, but that the anti-fraud office, FDNS, was not invited to investigate or examine specific cases or patterns of fraud.

#### Criminal and Terrorism Checks – Boston Marathon Bomber Case

According to the Administration, all applicants for DAPA will be checked through IDENT, FBI, and TECS databases. Since the time of Citizenship USA, most FBI checks are conducted electronically, and responses are quick if there is no derogatory information about an applicant; however, any flags that arise from a check must be examined manually and resolved, creating a potential bottleneck with a surge of cases.

The FBI check is mainly for criminal background checks (for suspects and crimes committed in this country) and it is less clear how vigorous the counter-terrorism check is, but all the more important for individuals in this country who have never been screened before entry. As you may recall, the Boston Marathon bombing, April 15, 2013, involved two brother perpetrators, one of whom (Dzhokhar “Jahar” Tsarnaev) was naturalized September 11, 2012, despite the FBI having information from Russian authorities that the brothers were involved with

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<sup>26</sup> Chicago Tribune, “33 Felons’ Citizenship to be Revoked by INS,” March 6, 1997, [http://articles.chicagotribune.com/1997-03-06/news/9703060195\\_1\\_citizenship-usa-citizenship-applications-citizenship-last-year](http://articles.chicagotribune.com/1997-03-06/news/9703060195_1_citizenship-usa-citizenship-applications-citizenship-last-year).

<sup>27</sup> The Treasury Enforcement Communications System, TECS, is Customs and Border Protection’s main immigration screening database.

<sup>28</sup> Judicial Watch, June 11, 2013, “Documents Reveal DHS Abandoned Illegal Alien Background Checks to Meet Amnesty Requests Following Obama’s DACA,” which has links to various USCIS emails obtained by Freedom of Information Act requests.

terrorist activity.<sup>29</sup> If the counter-terrorism namechecks were working in conjunction with immigration application background checks, a red flag should have been raised.

While applicant background checks are vetted through the FBI Terrorism Screening Center (TSC), this database only contains an abbreviated terrorist watch list (i.e., the no-fly and “selectee” lists) and it is not clear that immigration applications are checked against the larger database of known or suspected terrorists, the Terrorist Identities Data-mart Environment (TIDE).<sup>30</sup> This can result in a “no record” response to an FBI background check, even if the Intelligence Community has derogatory information concerning an applicant. Information-sharing and coordination on known or suspected terrorists has been a problem with past cases, such as with Umar Abdulmuttalab, the “underwear bomber,” who ignited explosive materials on a flight on its approach to Detroit in December, 2009. In that case, the perpetrator was placed in the TIDE database, but not on the no-fly list.<sup>31</sup> The terrorist (no-fly and selectee) watch list still also relies on agencies to nominate individuals to the list and that does not always happen.<sup>32</sup> In addition to foreign-based terrorism, homegrown terrorism continues to be a threat, with the year between May 2009 and November 2010 alone seeing 22 homegrown jihadist-inspired terror plots in the U.S. (many resulting in arrests).<sup>33</sup>

USCIS FDNS has officers at almost all Joint Terrorism Task Forces (JTTFs), at FBI TSC and the National Counterterrorism Center (NCTC), to resolve immigration related terrorism issues, but it is not clear that they have access to all information needed to resolve immigration application issues related to suspected terrorists. Even with access, the background check that is run for USCIS applicants apparently does not automatically check against the entire TIDE database and flag cases so that an officer can examine the case more closely.

#### USCIS Fraud Detection & National Security Directorate (FDNS) and Anti-Fraud Efforts

Fraud can be hard to measure – you do not really know how many fraudulent applications get through. When I was stamping visas early in my career at overseas posts, we generally assumed many documents would be fraudulent. But at USCIS, when a facially valid application is presented, it can be hard to deny. Something has to trigger an adjudicator to send it to the anti-fraud office to investigate.

FDNS is the primary office for USCIS anti-fraud investigations. FDNS has a budget of around \$100 million, \$40 million of which comes from a set-aside of a portion of employment-

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<sup>29</sup> U.S. House of Representatives, Committee on Homeland Security, “The Road to Boston: Counterterrorism Challenges and Lessons from the Marathon Bombings,” March 2014. Reuters, “Russia Warned U.S. about Boston Marathon bomb suspect Tsarnaev, report,” March 25, 2014.

<sup>30</sup> See Krouse, et al, Congressional Research Service, “Terrorist Watchlist Checks and Air Passenger Prescreening,” December 30, 2009, RL33645, for an explanation of various watchlist formation, dissemination, and use.

<sup>31</sup> Eileen Larence, Government Accountability Office, “Terrorist Watchlist: Routinely Assessing Impact of Agency Actions Since the December 25, 2009 Attempted Attack Could Help Inform Future Efforts,” May 2012, GAO-12-476.

<sup>32</sup> Id. See also, Senate Homeland Security & Governmental Affairs Committee, “A Ticking Time Bomb,” report on Fort Hood shootings of 2009, February 3, 2011, [http://www.hsgac.senate.gov/imo/media/doc/Fort\\_Hood/FortHoodReport.pdf?attempt=2](http://www.hsgac.senate.gov/imo/media/doc/Fort_Hood/FortHoodReport.pdf?attempt=2).

<sup>33</sup> Bjelopera, et al, Congressional Research Service, “American Jihadist Terrorism: Combating a Complex Threat,” December 7, 2010.

based non-immigrant visa fees that is mandated in law. Fraud does occur in the context of more than just temporary employment visa applications and one can question why a substantial portion of the FDNS budget comes from that alone. It is hard to say whether that budget is sufficient to deter or combat fraud when dealing with six million, and with DAPA perhaps far more, immigration applications. FDNS provides indicators of fraud to USCIS adjudicators and asks them to refer cases. It follows up with investigations of cases when warranted; this includes sending personnel to the field to verify businesses and offers for employment, or the veracity of a claimed family relationship. Sometimes investigations can take many months, possibly because of limited resources. At this time, FDNS has limited capacity to conduct proactive data-mining of CLAIMS3 to search for indications of fraud in particular cases or examine fraud trends. If it had expanded ability to electronically verify facts, perhaps using private database services, fraud investigations could be less time consuming. Without transformation of CLAIMS3 to a more advanced case processing system, like ELIS, FDNS capability is also limited. Nevertheless, I understand FDNS has extracted some data from CLAIMS3 to conduct limited searches.

DACA applications had a low refusal rate (at about four percent) and this may not be unexpected because with a population of individuals who have little to no records or identity trail, there will also be little in the way of derogatory information. However, I have been informed that another reason was that the anti-fraud office (FDNS) was taken out of processing so that no investigations would be conducted. That is not to say that there was a high rate of fraud or basic background checks are not conducted, but it would be difficult to verify without FDNS involvement.

For DACA and DAPA entrants who entered the U.S. without inspection, we have never conducted a background check on them and have very little knowledge of their identity; much of their base identity and documents will be established through foreign embassies and consulates (e.g., passports, birth certificates).<sup>34</sup> In addition, DAPA applications will be based on family relationships that will only be verified by assertions, affidavits, foreign documentation, or easily manufactured documentation.

To improve security and anti-fraud measures on this application pool, USCIS might consider the following. In the short term, USCIS could contract with independent data services to verify employment and employer relationships and verify residency and identity inputs in DAPA and DACA applications. USCIS also could have FDNS extract data on already approved DACA applications to study trends or search for fraud indicators. Applications are scanned at intake and used to populate CLAIMS3 data; FDNS may be able to use the scanned data to examine patterns of fraud. USCIS may want to consider random or data-driven checks of applications and possible interviews by FDNS officers. FDNS could run random or data-driven checks on DAPA family relationships (i.e., possible DNA testing) if there are indications of fraud. FDNS could build relationships with foreign official document issuing agencies to verify documents and understand the strength of foreign official documentation used in conjunction with DAPA and DACA applications. Although FDNS does conduct checks with INTERPOL for wanted criminals that may be in the applicant pool, further coordination with foreign law enforcement may raise flags for applicants with little known background. USCIS should modernize application intake through the ELIS system or some other system, in such a way that

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<sup>34</sup> See Instructions for I-821D, <http://www.uscis.gov/sites/default/files/files/form/i-821dinstr.pdf>.

USCIS anti-fraud efforts can “data-mine” for indicators of fraud. USCIS also may expand FDNS data-driven anti-fraud capability through further USCIS access and better resources (as this type of anti-fraud effort is less intrusive and time-consuming than the current field investigation).

### Conclusion

I want to be clear that most USCIS officers are hardworking and patriotic officials of the DHS and I am confident in the ability of USCIS officers to handle any major increase in workload, but DAPA and expanded-DACA would be an unprecedented increase in applications submitted at any one time. Currently, USCIS officers handle six million applications of varying degrees of complexity each year,<sup>35</sup> and each application type has a current stated processing time (or backlogs) of between two to six months (the targeted maximum length of time for USCIS processing), including six months for DACA applications.<sup>36</sup> The addition of an estimated five million applications to the system will be no small matter and there is a strong possibility that bottlenecks will form at the intake, fee processing, data-collection, adjudication, request-for-evidence, document manufacturing stages, in corollary applications, and even perhaps at foreign consular offices (that are issuing passports and foreign official documents). At each of these bottlenecks, there may be a temptation to streamline processing without proper quality checks.

So in answering the theme of this testimony – is USCIS ready for DAPA – I would say that it is of course “ready” if expectations are tempered. USCIS can take in four to five million additional applications, but certain facilities and processes must be ready for the flood. At the intake level, there may be physical limitations for excess mail and throughput at fee collection. At other levels USCIS must be ready for additional data-entry/collection, anti-fraud review, and document production (especially employment authorization cards). At the adjudication level, there must be enough *fully-trained* officers to handle millions of new applications, and USCIS must be given clear direction on priorities – should American businesses that went through the legal process to get (often specialty or low-supply) foreign workers on board expect longer processing periods because resources have been pulled to handle DAPA applications? Should American citizens expect longer processing times for their spouses or immediate relatives because of the same? These questions should not be left unresolved, and hidden in months old backlog data, but should be clarified up-front. And if the answer to these questions is “no,” then USCIS should expect to ramp up resources sufficient to meet the expected DAPA application inflow, or temper expectations for processing times.

Thus, with DAPA, USCIS and the administration should be realistic about the speed and care with which they can process millions of DAPA applications. In being realistic and forthcoming about expectations for processing times, USCIS will increase trust with policy-makers and the public, and will be able to fulfill its mandate to handle quality adjudications of all its applications.

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<sup>35</sup> USCIS Data, <http://www.uscis.gov/tools/reports-studies/immigration-forms-data>.

<sup>36</sup> USCIS Processing Times, <https://egov.uscis.gov/cris/processingTimesDisplay.do>. (It should be noted that many applicants for green cards, once processed, must wait in line for years to obtain their legal green card.)

**Testimony of Shawn Moran**  
**On behalf of the**  
**National Border Patrol Council**  
**In front of United States Senate Homeland Security and Governmental Affairs Committee**  
**February 4, 2015**

Chairman Johnson, Ranking Member Carper, members of the Committee, on behalf of the 16,500 Border Patrol Agents whom I represent, I would like to thank you for having this hearing.

My name is Shawn Moran and I am the Vice President and national spokesperson of the National Border Patrol Council. I am a 17 year veteran of the Border Patrol and have spent the majority of my career in the Imperial Beach and El Cajon Border Patrol Stations in California. I have also been temporarily assigned to several sectors and stations along the southwest border during that time.

Before I discuss how I believe the President's decision will impact border security, I want to be clear that I am not a lawyer. I am not here to comment on the legality of the President's actions. I am here as a federal law enforcement agent to discuss how the amnesty provided in November will impact border security. Unfortunately, I do not believe the border security implications were fully considered prior to the issuance of the executive order and that concrete actions need to be taken by Congress and the Administration this year to bolster border security.

Albert Einstein's definition of insanity is doing the same thing over and over again and expecting a different result. If you look at the history of our response to illegal immigration we certainly meet that definition. In 1986 Congress passed and President Reagan signed the Immigration Reform and Control Act (IRCA). This legislation was supposed to "solve" the illegal immigration problem in this country and in the process legalized illegal aliens who had been in the country prior to 1982.

What was the result? Illegal immigration exploded. The Pew Research Center estimates that the population of illegal aliens in this country in 1990, immediately following the passage of IRCA, was 3.5 million. By 2007 that population had swelled to 12.2 million. Cities like San Diego, where I am stationed, and El Paso were nearly overrun.

In my career, I have arrested and interviewed thousands of illegal aliens. In deciding whether or not to attempt to enter this country illegally, these individuals weigh the risks and potential rewards. These individuals are risking not only a lifetime of savings to pay the smugglers but literally their own lives in the process. They know the border is a dangerous place. They know

that they are opening themselves up to predation from smugglers in addition to the physical hazards of crossing the Rio Grande River, the Arizona desert, or even the Montana wilderness.

Unfortunately since the passage of IRCA there is a perception among illegal aliens that if you can get over the border and can hide in the shadows long enough, eventually there will be a pathway to legal status. This pathway may be by virtue of the duration you have been here or through your children. We need only look to the debacle last summer with unaccompanied minors to see how prevalent this perception is among potential illegal aliens.

Last year the Administration took great pains to point out that their most recent expansion of Deferred Action for Childhood Arrivals (DACA) was a continuation of deferred actions that had been taken by previous Administrations. We were all told that there was precedent for their actions. The Administration was completely correct. There were ample amounts of precedent and therein lies the problem. We will never be able to stop illegal immigration until potential illegal aliens believe that it is a losing proposition. They need to know that they will be found and that hiding in the shadows will do them no good. Employers need to know that if they hire illegal aliens, there will be credible sanctions.

The question then becomes what steps this Committee, within your jurisdiction, can take to strengthen border security before the next wave of illegal immigration comes. Several suggestions that I have include:

- Increased manpower- Currently there are 21,370 Border Patrol Agents in this country. Under sequestration we effectively lost 1,500 full time equivalents (FTEs) that have thankfully been restored under the Border Patrol Pay Reform Act introduced by Senators Tester and McCain. We do not have to double the size of the Border Patrol to gain operational control of the border. But we are, in my opinion, approximately 5,000 Agents short of where we should be. NBPC would advocate that of this number, 1,500 be sent to the northern border which is woefully understaffed and the remaining 3,500 positions allocated to interior enforcement.
- Supervising staffing levels- The Border Patrol is an extremely top heavy organization with far too many layers of management and a convoluted chain of command. Although Congress has provided the funding to double the size of the Border Patrol we have not doubled the number of Agents at the border. Let me explain, the average large police department has one supervisor for every 10 officers. The Border Patrol has one supervisor for every 4 Agents. The Committee should mandate a 10:1 ratio and achieve it through attrition in the supervisory ranks. The second problem is that we have Agents doing duties like processing and transportation that could be handled more cost effectively by non-law enforcement personnel.

- Interior Enforcement- Every night we effectively play goal line defense because all of our resources and assets are concentrated right at the border instead of having a defense in depth. Let me give you an example, we have 7,000 Agents in Arizona and do you know how many Agents we have assigned to Phoenix, which is an important transit point for traffickers? The answer is zero. The Border Patrol's northernmost station in Arizona is Casa Grande, which is 50 miles south of Phoenix.
- Better training- During the buildup of the Border Patrol during the Bush Administration the Academy's duration was reduced from approximately 20 weeks to as little as 54 days if you spoke Spanish. This is simply not enough time to properly train an Agent and weed out those who are not up to the challenge. The Committee should require that the Academy revert back to 20 weeks.

Again, I want to thank the Committee for the opportunity to testify. If you have any questions I would be happy to answer them to the best of my ability.

Statement of

**Bo Cooper, Esq.**  
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Before the

**United States Senate**  
**Homeland Security and Governmental Affairs Committee**

**Hearing on Deferred Action on Immigration: Implications and Unanswered Questions**  
**February 4, 2015**

Thank you Chairman Johnson, Ranking Member Carper, and distinguished members of the Committee. I am grateful to have the opportunity to join you at this hearing and to try to contribute to the Committee's consideration of the critical questions at issue today.

My name is Bo Cooper. I am a partner at Fragomen, Del Rey, Bernsen, & Loewy LLP, an international immigration law firm. In recent years, I have taught immigration law at schools in Washington, D.C. and Michigan, including courses on immigration and national security, and on prosecutorial discretion and other key aspects of federal immigration enforcement policy. From 1999 up until the launch of the Department of Homeland Security in 2003, I served as General Counsel of the U.S. Immigration and Naturalization Service (INS). I served in this position during Administrations of both parties. At that time, the border enforcement, interior enforcement, and adjudications functions that are now distributed among the three separate DHS immigration agencies—U.S. Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS)—were all the combined responsibility of the agency whose legal function I oversaw.

Drawing on these three perspectives—public service, private practice, and academics—I will try today to help address some of the Committee's concerns about the implementation of the recent DHS directives on immigration, a set of administrative policies to enhance the effectiveness and rationality of the nation's immigration system. These measures are not a substitute for Congressional action, but they do represent an important first step in the process of reforming an outdated system that has suffered from legislative stalemate. While these directives touch on many areas of immigration policy, the issues that have garnered the most attention and concern are the expansion of the Deferred Action for Childhood Arrivals (DACA) program and the creation of the Deferred Action for Parents of Americans and Lawful Permanent Residents<sup>1</sup> (DAPA) program.

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<sup>1</sup> This program is also called Deferred Action for Parental Accountability. See U.S. Citizenship and Immigration Services, *Executive Actions on Immigration*, available at <http://www.uscis.gov/immigrationaction>.

This hearing raises questions that are key to a proper evaluation of the recent DHS directives. Policy makers must necessarily address the financial, logistical, enforcement, and security concerns surrounding any new or expanded program, especially one affecting a complex, crucial, and sensitive national policy priority like immigration. I hope to assuage some of the concerns that have been expressed in the congressional and other public debate over the DHS directives, including the expansion of DACA and the implementation of DAPA as part of an integrated series of initiatives announced by the Secretary of Homeland Security. I will focus my testimony on the following key points:

- The DACA and DAPA programs rest on solid legal and policy grounds. They represent a sensible and principled application of the prosecutorial discretion that DHS must exercise given the scope of the problems facing our nation's immigration system today, coupled with DHS's finite resources.
- DHS has the tools and capacity to handle implementation of these programs from a logistical, financial, and enforcement perspective. In meeting the challenges ahead, DHS is operating from the considerable advantage of having, with the 2012 implementation of DACA, a recent model and experience on which to base its current planning. DHS ran an effective initial rollout of DACA, and can use that experience and the several-month implementation period to prepare for the further expansion of DACA and the impending launch of DAPA. Moreover, DHS has designed these programs to present no cost to taxpayers and to be self-funded by the fees requestors must pay. These new and expanded programs are of course broader than DACA, but our immigration agencies are designed to have the flexibility to scale to evolving caseloads and demands.
- Based not only on this experience but also on decades of expertise, sharpened forcefully by the thinking, resources, and energy that have poured into the immigration function since the terror attacks of 2001 and the creation of DHS, the agency should be well-equipped to handle public safety or national security issues relating to the DACA and DAPA initiatives. DHS has long prioritized border enforcement, security, and the apprehension and removal of criminal aliens, just as Congress has specifically mandated. The DACA and DAPA programs are designed to help the agency further focus its resources in that regard.
- DHS's new policies should also strengthen public safety, as millions of undocumented individuals currently living and working outside the system will come forward. They will make their presence known, enter into federal law enforcement databases, and undergo background checks. DHS has strong measures in place to conduct national security and criminal background checks and detect fraud. DHS will be able to leverage its extensive and sophisticated screening experience in its implementation of the new DACA and DAPA programs.
- The enforcement prioritization reflected in the recent DHS directives represents an improvement to the administration of our country's outdated and insufficiently effective immigration system. These measures should not be viewed as usurping the congressional function. To the contrary, I believe that these actions serve up to Congress a set of

important improvements, made within the confines of existing law, to an immigration system that does not serve our national interest in the way that it must. But only Congress, through reforms enacted through the legislative process that has always been such a proud feature of the American political system, can change our laws so that immigration fuels American creativity, economic strength, and competitiveness to the maximum possible extent.

**I. Congress can reasonably debate whether DACA and DAPA are the right policy, but the programs rest on sound and well-established legal foundations.**

While the committee's focus at this hearing is properly on the logistical and security risks of DACA and DAPA, I believe it is useful to address briefly the strong legal underpinnings of those programs. In my opinion, DACA and DAPA were implemented with sound legal footing. The legal arguments supporting this position have been developed in depth in other fora, but it is helpful at the outset of this discussion to recall the programs' legal foundation.

Just as it is throughout law enforcement, prosecutorial discretion is a necessary and long-standing feature of our immigration system. The Supreme Court recently emphasized the breadth of prosecutorial discretion in the immigration context and summarized the myriad considerations that immigration authorities must balance in implementing immigration laws:

Discretion in the enforcement of immigration law embraces immediate human concerns. Unauthorized workers trying to support their families, for example, likely pose less danger than alien smugglers or aliens who commit a serious crime. The equities of an individual case may turn on many factors, including whether the alien has children born in the United States, long ties to the community, or a record of distinguished military service. Some discretionary decisions involve policy choices that bear on this Nation's international relations. Returning an alien to his own country may be deemed inappropriate even where he has committed a removable offense or fails to meet the criteria for admission. The foreign state may be mired in civil war, complicit in political persecution, or enduring conditions that create a real risk that the alien or his family will be harmed upon return. The dynamic nature of relations with other countries requires the Executive Branch to ensure that enforcement policies are consistent with this Nation's foreign policy with respect to these and other realities.<sup>2</sup>

Congress has also explicitly acknowledged or even required prosecutorial discretion in the immigration context in substantive statutes and in appropriations bills. DHS funding levels contemplate the removal of fewer than 400,000 of the approximately 11 million illegal immigrants in the United States each year, making the exercise of prosecutorial discretion a necessary and inherent feature of our immigration system. The DACA and DAPA programs are appropriate exercises of this prosecutorial discretion, and both initiatives will focus removal resources on the high priority cases that the Secretary has identified in light of Congress's direction and the interests of national security, border integrity, and public safety. In short, the

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<sup>2</sup> *Arizona v. United States*, 132 S. Ct. 2492, 2499 (2012).

programs enable DHS to focus on deporting those illegal immigrants who pose the most significant threats to American security.

The DACA and DAPA programs are part of DHS's broader focus on its mission to secure our nation's borders. In recent years, DHS has spent every penny of its budgeted funds involved with apprehending and deporting aliens, and there is no reason to believe that DACA or DAPA will affect this practice. In 2012, for instance, the federal government spent \$17.9 billion on immigration enforcement. This sum is more than the budgets of the FBI, DEA, ATF, Secret Service, and U.S. Marshals Service *combined*. There were more than 577,295 removals and returns in 2014,<sup>3</sup> and the number of people trying to cross our borders illegally is the lowest since the 1970s.<sup>4</sup> DHS is also deporting an increasing number of convicted criminals. These statistics indicate active enforcement—not abdication of legal duty.

DHS's use of the “deferred action” tool under DACA and DAPA is neither new nor unprecedented. Deferred action and similar programs with different nomenclature<sup>5</sup> have been a crucial part of immigration enforcement for more than 50 years. Presidents have granted deferred action or similar categorical discretionary relief in the past. Not only has Congress never moved to quash deferred action, but it has in fact explicitly recognized it by statute.<sup>6</sup> Deferred action has been mentioned in administrative regulations<sup>7</sup> and Supreme Court decisions.<sup>8</sup> Thus, every branch of the federal government has at least acknowledged if not encouraged the use of deferred action.

Finally, DHS's authority to issue work permits to recipients of deferred action is long-standing and clearly established. Since at least the 1980s, the former INS understood that the authority to decide which aliens would receive permission to work fell within the general discretionary authority of the agency.<sup>9</sup> Congress has also authorized the Secretary of Homeland Security to

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<sup>3</sup> DHS Press Release, *DHS Releases End of Year Statistics* (Dec. 19, 2014), available at <http://www.dhs.gov/news/2014/12/19/dhs-releases-end-year-statistics>.

<sup>4</sup> White House Press Release, *Remarks by the President in Address to the Nation on Immigration* (Nov. 20, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration>.

<sup>5</sup> Programs similar to DACA and DAPA include Deferred Enforced Departure, Extended Voluntary Departure, and Family Fairness.

<sup>6</sup> See, e.g., 8 U.S.C. § 1227(d)(2) (“The denial of a request for administrative stay of removal under this subsection shall not preclude the alien from applying for...deferred action.”); 8 U.S.C. § 1154(a)(1)(D)(i)(II, IV) (citing individuals “eligible for deferred action”).

<sup>7</sup> See, e.g., 8 C.F.R. § 109.1(b)(7) (1982) (allowing work permits for deferred action recipients).

<sup>8</sup> *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999). Lower court decisions have also referenced deferred action. See, e.g., *Mada-Luna v. Fitzpatrick*, 813 F.2d 1006 (9th Cir. 1987).

<sup>9</sup> See Office of Legal Counsel, U.S. Dept. of Justice, *The Department of Homeland Security's Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others* (Nov. 19, 2014) at 21 n. 11.

grant work permits,<sup>10</sup> and USCIS has granted such permits to deferred action recipients who demonstrate economic necessity to work.<sup>11</sup> Work authorization has also historically accompanied other temporary grants of relief from deportation.<sup>12</sup> Work authorization to DACA and DAPA recipients thus relies on the same authority that the Executive Branch has exercised for over 30 years. DACA and DAPA provide no special path to citizenship and no special Green Card for those recipients, only temporary permission to be present in this country, with work authorization if the recipients can show economic necessity. As DHS has repeatedly emphasized, a grant of deferred action can be revoked at any time.<sup>13</sup>

## **II. DHS's prioritization under DACA and DAPA is a common sense, effective policy choice.**

As discussed above, our current immigration scheme inevitably requires the prioritization of limited enforcement resources. With current levels of DHS funding, the individuals who will receive deferred action under DACA or DAPA are unlikely to be deported even absent those programs. DACA and DAPA are, in a practical sense, a policy recognition of that reality. DHS's goal has long been to target criminals and national security threats over illegal but otherwise law-abiding immigrants, and DACA and DAPA are a more transparent framework to support that aim.

While DACA and DAPA establish threshold eligibility criteria, the grant of deferred action is an individualized determination based on case-by-case exercise of discretion. Secretary Johnson's memoranda outlining the initiatives set forth broad policy goals but also specifically instruct officers to make case-by-case determinations based on several non-exhaustive factors.<sup>14</sup> And the early DACA statistics suggest that USCIS is exercising precisely the type of individualized

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<sup>10</sup> See 8 U.S.C. § 1324A(h)(3) (defining "unauthorized alien" to exclude aliens "authorized to be so employed by this Act or by the Attorney General" [now the Secretary of Homeland Security]).

<sup>11</sup> See 8 C.F.R. § 274a.12(c)(14).

<sup>12</sup> For example, in the aftermath of Hurricane Katrina, USCIS allowed F-1 visa holders who were displaced from their course of study by the devastation to apply for work authorization. See [http://www.uscis.gov/sites/default/files/files/pressrelease/F1Student\\_11\\_25\\_05\\_PR.pdf](http://www.uscis.gov/sites/default/files/files/pressrelease/F1Student_11_25_05_PR.pdf).

<sup>13</sup> See Memorandum from Jeh Charles Johnson, Secretary of Homeland Security, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents (Nov. 20, 2014) at 2.

<sup>14</sup> See Memorandum from Jeh Charles Johnson, Secretary of Homeland Security, Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants (Nov. 20, 2014) at 5-6; Memorandum from Jeh Charles Johnson, Secretary of Homeland Security, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents (Nov. 20, 2014) at 5.

decision making contemplated by the memoranda, with more than 38,000 denials through the end of 2014.<sup>15</sup>

DHS's prioritization is also consonant with the long-standing principle that America will gladly absorb talent and ambition from abroad while protecting its security interests. The DACA and DAPA programs will allow immigrants who have been present in our country for years, if not decades, to stop living in the shadows. Law enforcement officers have resoundingly supported this move, which will make immigrants who need help from police more likely to seek it and those who witness crimes more likely to provide information to the police. DACA and DAPA will help to break down walls of distrust between immigrant communities and the police officers who serve them, increasing security for all involved.<sup>16</sup>

The DACA and DAPA programs also represent a financially sound use of limited public resources. According to the Council of Economic Advisors, over the next 10 years these programs will conservatively raise the GDP by 0.4 percent, raise average wages for U.S.-born workers by 0.3 percent, cut federal deficits by \$25 billion, and have no impact on the likelihood of employment for U.S.-born workers.<sup>17</sup> To the contrary, the programs will eliminate the incentive that employers now have to hire unauthorized workers at low wages instead of hiring lawful workers. The Congressional Budget Office has confirmed the fiscal responsibility of DACA and DAPA, concluding recently that a bill to eliminate the programs would increase deficits by \$7.5 billion.<sup>18</sup> And as discussed below, DHS believes that the applicant fees are set at a level that will finance the expansion necessary to adjudicate them.

And while DACA and DAPA are good policy from a governmental efficacy standpoint, they will also have positive effects on those who given deferred action under the programs. DACA and DAPA recipients are not the people that most American citizens want to see deported, and there

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<sup>15</sup> See Decl of Donald W. Neufeld, Doc. 130-11, *Texas v. United States*, Case No. 1-14-CV-00254 (S.D. Tex. Jan. 30, 2015) at ¶ 23. USCIS rejected a further 43,174 requests because they had a fatal flaw such as failure to submit the required fee or failure to sign the request. See *id.* at ¶¶ 14, 23.

<sup>16</sup> See, e.g., Amici Curiae Brief of Major Cities Chiefs Association, Police Executive Research Forum, and Individual Sheriffs and Police Chiefs in Opposition to Plaintiffs' Motion for Preliminary Injunction, Doc. 83-1, *Texas v. United States*, Case No. 1-14-CV-00254 (S.D. Tex. Jan. 12, 2015).

<sup>17</sup> At the upper bound, CEA estimates that these programs will raise GDP by 0.9 percent and shrink deficits by \$60 billion over the next ten years. See White House Council of Economic Advisers, *The Economic Effects of Administrative Action on Immigration*, Nov. 2014, available at [http://www.whitehouse.gov/sites/default/files/docs/cea\\_2014\\_economic\\_effects\\_of\\_immigration\\_executive\\_action.pdf](http://www.whitehouse.gov/sites/default/files/docs/cea_2014_economic_effects_of_immigration_executive_action.pdf).

<sup>18</sup> Congressional Budget Office, Letter Re: Budgetary Effects of Immigration-Related Provisions of the House-Passed Version of H.R. 240, An Act Making Appropriations for the Department of Homeland Security (Jan. 29, 2015), available at <https://www.cbo.gov/sites/default/files/cbofiles/attachments/hr240.pdf>.

are real fiscal, human, and societal tolls when an American child is separated from her undocumented mother through deportation proceedings. DACA and DAPA give a measure of safety to the citizen child to alleviate the fear that her undocumented mother will be sent to her country of origin despite the fact that she has lived in the United States for decades. No longer do undocumented but otherwise law-abiding immigrants have to fear that a call to report a crime against them will result in their own deportation. DACA and DAPA bear the mark of good policy not only because they improve our government but also because they enhance public safety, further our values as a Nation, and improve the lives of millions of human beings who, because of their long-standing residency and citizen or permanent resident children, are integrated into the fabric of American society.

### **III. DHS is prepared to implement DACA and DAPA.**

Throughout their history, the U.S. immigration agencies have had to adapt and react to policy shifts and evolving logistical demands. In addition to capacities built and lessons learned from that history, DHS here has a very specific, recent, and similar model on which to build in meeting the new challenges of DACA and DAPA implementation. I believe that the existing DACA program also can serve as a useful model from which the Committee can examine DHS's ability to succeed with new initiatives.

As of the end of 2014, USCIS had received more than 727,000 applications under DACA and had around 50,000 pending cases.<sup>19</sup> Estimates of the number of unauthorized immigrant youth vary, but one recent report puts the number at 1.2 million.<sup>20</sup> Thus, approximately 50-60 percent of eligible youth have applied for DACA relief under the existing program.

DAPA represents a challenge for DHS that is different in number but not in kind from the DACA program. While estimates vary concerning the number of potential DAPA recipients, a reasonable estimate is roughly 3.5 to 4 million.<sup>21</sup> I understand that DHS is prepared for a range of DAPA filing rates that may match that of DACA or be submitted at a different rate.<sup>22</sup> DHS

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<sup>19</sup> See Decl of Donald W. Neufeld, Doc. 130-11, *Texas v. United States*, Case No. 1-14-CV-00254 (S.D. Tex. Jan. 30, 2015) at ¶ 23. See also USCIS, *Number of I-821D, Consideration of Deferred Action for Childhood Arrivals by Fiscal Year, Quarter, Intake, Biometrics and Case Status: 2012-2014 First Quarter*, available at <http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA-06-02-14.pdf>.

<sup>20</sup> Jeanne Batalova, Sarah Hooker, and Randy Capps, *DACA at the Two-Year Mark: A National and State Profile of Youth Eligible and Applying for Deferred Action*, Migration Policy Institute, Aug. 2014, at 1.

<sup>21</sup> See, e.g., Migration Policy Institute, Press Release, *MPI: As Many as 3.7 Million Unauthorized Immigrants Could Get Relief from Deportation under Anticipated New Deferred Action Program* (Nov. 20, 2014), available at <http://www.migrationpolicy.org/news/mpi-many-37-million-unauthorized-immigrants-could-get-relief-deportation-under-anticipated-new>.

<sup>22</sup> See U.S. Citizenship and Immigration Services, *Executive Actions on Immigration*, available at <http://www.uscis.gov/immigrationaction>.

has met the challenges of the DACA program with alacrity, and I see no reason why this success should not continue with the implementation of DAPA.

DHS is already taking steps to meet the logistical challenges posed by DAPA. DHS has chosen a site in Northern Virginia that will serve as the centralized processing location for DAPA. The agency prudently chose a site that was already leased by the government, was the right size for the project, was already furnished, and could be easily upgraded to meet its IT demands. While a typical acquisition of a space this size would take years and no existing site could accommodate the expansion of necessary personnel, DHS was able to secure the space in a matter of months. I understand that DHS has projected that it will hire approximately 700 permanent employees to process the DAPA and DACA applications, with an additional 200-300 contractors for surge support.

Finally, as with immigration adjudications generally, the law establishes a sensible model for funding the DAPA expansion. USCIS, which will primarily administer the adjudications function of the programs, is fee-funded by statute.<sup>23</sup> I understand that the fees that DACA and DAPA applicants will pay cost several hundred dollars each and are set at a level that will finance this expansion.<sup>24</sup> User fee authority has been a feature of funding immigration benefits since the late 1980s. Each Administration has worked with congressional appropriators over the past decades to carry out this authority in an efficient and effective manner to handle surges in application flow and to time the receipt of applicant fees with expenditures associated with the benefits sought. Congress and this Administration have the tools and experience necessary to make these programs financially sound and self-sustaining. In other words, the DAPA and DACA programs will be self-funding such that they will not cost taxpayers, and indeed will ultimately benefit them through the positive economic effects of DAPA and DACA.

#### **IV. DHS's implementation of DACA and DAPA increases public safety and strengthens our national security.**

In my view, DHS's implementation of DACA and DAPA stand to strengthen—not hinder—our national security interests. DACA and DAPA should not raise any national security issues outside the norm for the agency. DHS is accustomed to screening applicants for security concerns, and this process is a basic requirement for most visa approvals. At the moment, the illegal immigrant population is not subject to any background checks, but in applying for DACA and DAPA they will have to provide names, addresses, fingerprints and other personal history to DHS, which will conduct a robust security check.

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<sup>23</sup> See 8 U.S.C. § 1356(m) (“[F]ees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services...[and] may also be set at a level that will recover any additional costs associated with the administration of the fees collected.”)

<sup>24</sup> See U.S. Citizenship and Immigration Services, *Executive Actions on Immigration*, available at <http://www.uscis.gov/immigrationaction>.

I understand that DACA and DAPA applicant fingerprints will be run through numerous law enforcement databases both within and outside DHS that contain information from local, state, and federal law enforcement agencies.<sup>25</sup> I also understand that applicant fingerprints will be run against TECS,<sup>26</sup> which provides information about ongoing investigations and warrants, as well as fraud alerts. A background check will also be run against the unified DHS watchlist.<sup>27</sup>

DHS also has robust anti-fraud measures in place that would be applied to the DACA and DAPA context. I understand that DHS is working with other countries to build a library of exemplar documents with which it can train its adjudicators to recognize fraudulent identity documents from abroad. I further believe that DHS plans to use the Immigrations and Customs Enforcement (ICE) forensics laboratory to verify the authenticity of suspect documents.

DHS has extensive experience in adjudicating each element of the DACA and DAPA applications. DHS has developed the capacity to confirm parent-child relationships through, for instance, the processing of hundreds of thousands of petitions for alien relative (I-130) forms each year. Similarly, DHS (and before it the INS) has made proof of residency determinations for decades. DHS has already applied this expertise to making such determinations in the hundreds of thousands of adjudicated DACA applications. I understand that DHS has processes in place to establish school enrollment and that the agency has received exemplar documents from school districts around the country. Finally, I understand that DHS has implemented the added measure of running birth certificates that it receives through the EVVE, a vital statistics database,<sup>28</sup> a process that DHS intends to continue in adjudicating DAPA applications.

I am also aware that DHS has robust internal processes to ensure that, if a criminal is identified through its adjudication of an application, the appropriate authorities are notified so that criminal prosecution and/or immigration removal proceedings can begin.<sup>29</sup> For this reason, I believe that the DACA and DAPA programs have positive criminal enforcement consequences. Indeed, DHS has already assisted law enforcement in locating criminals who applied for DACA benefits.<sup>30</sup>

**V. DACA and DAPA should not contribute to the number of illegal crossings over the southern border.**

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<sup>25</sup> These databases include IDENT, CJIS, the DOJ print index, and FBI holdings.

<sup>26</sup> See Privacy Impact Assessment for the TECS System: CBP Primary and Secondary Processing, *available at* <http://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-cbp-tecs-sar-update.pdf>.

<sup>27</sup> I further understand that these checks will be run using any aliases or misspellings of the alien's name.

<sup>28</sup> The EVVE database is operated by the National Association for Public Health Statistics and Information Systems and is used by numerous federal agencies to validate birth and death records. See NAPHISIS, *About EVVE*, *available at* <http://www.naphsis.org/about-evve>.

<sup>29</sup> See Decl of Donald W. Neufeld, Doc. 130-11, *Texas v. United States*, Case No. 1-14-CV-00254 (S.D. Tex. Jan. 30, 2015) at ¶ 22.

<sup>30</sup> *Id.*

I do not believe that the presence of the DACA and DAPA programs will contribute to the number of illegal crossings at the United States-Mexico border. Applicants for DACA and DAPA must meet strict eligibility requirements. Both programs are only available for aliens who have been residing in the United States since 2010,<sup>31</sup> and, as discussed above, DHS rigorously assesses the evidence presented to verify that the applicant meets the criteria. DHS has redoubled its efforts to secure our southern border by increasing resources deployed there and prioritizing the return of recent border crossers.<sup>32</sup> This has been made possible in part by significant increases in border enforcement funding from Congress, for which there has been bipartisan support in numerous recent Budgets.

Those who have crossed illegally into the United States within the last five years are not eligible for DACA or DAPA, and DHS and the U.S. Department of State have launched an aggressive international campaign designed to dispel any potential misinformation concerning these new programs.<sup>33</sup> Congress and the Administration have the same objective here: avoiding the creation of false expectations about DACA/DAPA eligibility among those who might consider crossing illegally. As long as border enforcement remains at current levels and DACA and DAPA claims are adjudicated with care, the existence of these programs should not increase illegal immigration. Congress can properly exercise its oversight role to ensure that these enforcement and adjudication goals are met, and such actions by Congress should be welcomed by the Administration.

While it is essential to analyze whether DACA drove the uptick in unaccompanied children arriving at the southern border in the summer of 2014, the data do not indicate that it did.<sup>34</sup> Most importantly, the nationalities of the persons arriving in that flow are not consistent with the possibility that the flow was DACA-driven. Three of the top four origin countries for the arriving minors were Honduras, Guatemala, and El Salvador.<sup>35</sup> Crime and violence levels in

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<sup>31</sup> USCIS, *Executive Actions on Immigration*, available at <http://www.uscis.gov/immigrationaction# DACA>.

<sup>32</sup> See DHS Press Release, *Remarks by Secretary of Homeland Security Jeh Johnson: "Border Security in the 21<sup>st</sup> Century" – As Delivered* (Oct. 9, 2014), available at <http://www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century>; DHS Presentation, *Border Security in the 21<sup>st</sup> Century*, available at [http://www.dhs.gov/sites/default/files/publications/secretary/14\\_1009\\_s1\\_border\\_slide\\_508.pdf#page=1](http://www.dhs.gov/sites/default/files/publications/secretary/14_1009_s1_border_slide_508.pdf#page=1).

<sup>33</sup> See DHS Press Release, *Departments of State, Homeland Security Launch Executive Action on Immigration: Know the Facts Awareness Campaign* (Jan. 5, 2015), available at <http://www.dhs.gov/news/2015/01/05/departments-state-homeland-security-launch-executive-action-immigration-know-facts>.

<sup>34</sup> See Declaration of Michael Hoefer, *Texas v. United States*, Case No. 1-14-CV-00254 (S.D. Tex. Jan. 30, 2015) at ¶¶ 27-31.

<sup>35</sup> Before 2002, more than 75 percent of unaccompanied minor children came from Mexico; by 2014 that number had dropped to just 25 percent. See Muzaffar Chishti and Faye Hipsman, *Dramatic Surge in the Arrival of Unaccompanied Children Has Deep Roots and No Simple*

those countries are at a crisis point, and many of the children arriving at our border had already experienced violence or threats.<sup>36</sup> The data suggests that those external factors, rather than mistaken beliefs about potential legal benefits in the United States, drove the increases that we saw.<sup>37</sup> If it were otherwise, one would have expected a far steeper rise in the number of unaccompanied minors from Mexico and from Central American countries other than those with the greatest current levels of social unrest.

Another strong factor suggesting that DACA has not increased illegal immigration is the fact that the number of unauthorized immigrants in the United States has been roughly unchanged since 2009.<sup>38</sup> Even accounting for the recent increase in the number of unaccompanied minors, unauthorized migration is at its lowest point in the past 40 years. Over the past fifteen years and across the Clinton, Bush, and Obama administrations, the number of border patrol agents and technology dedicated to our southern border has reached unprecedented levels.<sup>39</sup> If anything, I believe that the DACA and DAPA programs strengthen our border security by allowing DHS to focus more of its resources on the border rather than on apprehending non-criminal individuals whose extended U.S. residence has tied them already into the fabric of our communities.

## **VI. DACA and DAPA are a net fiscal benefit for our country.**

While my background is in immigration law rather than in the law of public benefits, certain top-line facts about the tax and benefits issues surrounding these immigration programs appear to

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*Solutions*, Migration Policy Institute (June 13, 2014), *available at* <http://www.migrationpolicy.org/article/dramatic-surge-arrival-unaccompanied-children-has-deep-roots-and-no-simple-solutions>.

<sup>36</sup> See *id.* (“[M]urder, poverty, and youth unemployment rates paint a bleak picture of conditions that children may face in Honduras, Guatemala, and El Salvador in particular. Rising gang violence in some of these countries has become an undeniable factor in many children’s decision to migrate. A recent UN High Commissioner for Refugees (UNHCR) study based on interviews with more than 400 unaccompanied minors found that 48 percent had experienced violence or threats by organized-crime groups, including gangs, or drug cartels, or by state actors in their home countries, and 22 percent reported experiencing abuse at home and violence at the hands of their caretakers.”).

<sup>37</sup> For instance, Honduras has the highest murder rate in the world. CNN, *Which countries have the world’s highest murder rates? Honduras tops the list* (Apr. 11, 2014), *available at* <http://www.cnn.com/2014/04/10/world/un-world-murder-rates/>.

<sup>38</sup> Jeffrey S. Passel, D’Vera Cohn, Jens Manuel Krogstad, and Ana Gonzalez-Barrera, *As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled*, Pew Research Center (Sept. 3, 2014).

<sup>39</sup> See DHS Press Release, *Remarks by Secretary of Homeland Security Jeh Johnson: “Border Security in the 21<sup>st</sup> Century” – As Delivered* (Oct. 9, 2014), *available at* <http://www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century>; DHS Presentation, *Border Security in the 21<sup>st</sup> Century*, *available at* [http://www.dhs.gov/sites/default/files/publications/secretary/14\\_1009\\_s1\\_border\\_slide\\_508.pdf#page=1](http://www.dhs.gov/sites/default/files/publications/secretary/14_1009_s1_border_slide_508.pdf#page=1).

allay the most commonly-expressed concerns regarding public assistance to DACA and DAPA recipients. According to the Council of Economic Advisors estimates, the growth in GDP fueled by the DACA and DAPA recipients will reduce the federal deficit by \$25 to \$60 billion over the next ten years.<sup>40</sup> CEA also estimates that wages of American workers will increase by 0.3%. This is because allowing undocumented immigrants to apply for temporary work permits will shrink the underground economy and help ensure that employers are paying all of their workers a fair wage. Unauthorized aliens and some Americans compete today for the same work. If most of these labor market participants are work authorized, there should be upward pressure on the wages paid in these occupations, and this will benefit U.S. workers pursuing those job opportunities.

Even before DACA, roughly 3.1 million undocumented immigrants were paying into the Social Security fund, contributing approximately \$100 billion into the fund in the past decade.<sup>41</sup> Illegal immigrants also contributed \$13 billion in payroll taxes to Social Security in 2010 with only \$1 billion in benefit payments.<sup>42</sup> One would expect these contribution numbers to rise substantially with the increase in the newly-legal workforce under DACA and DAPA, which would in turn increase the stability of the Social Security fund.<sup>43</sup>

While the Congressional Budget Office found that individuals with DAPA and DACA will be able to collect their earned wages under the Social Security system, it is important to note that Social Security and Medicare are earned benefits funded through workers' payroll taxes, with

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<sup>40</sup> White House Council of Economic Advisers, *The Economic Effects of Administrative Action on Immigration*, Nov. 2014, available at [http://www.whitehouse.gov/sites/default/files/docs/cea\\_2014\\_economic\\_effects\\_of\\_immigration\\_executive\\_action.pdf](http://www.whitehouse.gov/sites/default/files/docs/cea_2014_economic_effects_of_immigration_executive_action.pdf).

<sup>41</sup> Roy Germano, *Unauthorized Immigrants Paid \$100 Billion Into Social Security Over Last Decade*, Vice News (Aug. 4, 2014), available at <https://news.vice.com/article/unauthorized-immigrants-paid-100-billion-into-social-security-over-last-decade>. See also Marshall Fitz, Philip E. Wolgin, and Patrick Oakford, *Immigrants Are Makers, Not Takers*, Center for American Progress (Jan. 28, 2013), available at <https://www.americanprogress.org/issues/immigration/news/2013/02/08/52377/immigrants-are-makers-not-takers/>.

<sup>42</sup> Stephen Goss, Alice Wade, J. Patrick Skirvin, Michael Morris, K. Mark Bye, and Danielle Huston, Social Security Administration Actuarial Note, *Effects of Unauthorized Immigration on the Actuarial Status of the Social Security Trust Funds*, [http://www.ssa.gov/oact/NOTES/pdf\\_notes/note151.pdf](http://www.ssa.gov/oact/NOTES/pdf_notes/note151.pdf).

<sup>43</sup> See, e.g., The White House Blog, *CBO Report: Immigration Reform Will Shrink the Deficit and Grow the Economy* (June 18, 2013), available at <http://www.whitehouse.gov/blog/2013/06/18/cbo-report-immigration-reform-will-shrink-deficit-and-grow-economy>.

eligibility based on work history and taxes paid. DACA and DAPA recipients will receive those benefits only after they have worked and paid taxes for 10 years.<sup>44</sup>

Unlike American citizens or legal permanent residents, however, DACA and DAPA recipients will not be eligible to receive most public benefits such as CHIP, SNAP, TANF or health care through the state and federal exchanges.<sup>45</sup> Most importantly, the CBO found that the DAPA and DACA programs result in far greater revenues than spending, and eliminating those programs (as the House DHS spending bill requires) would result in an increase in the deficit of \$7.5 billion.<sup>46</sup>

There are strong reasons to believe that DACA and DAPA will only increase participation in the American tax system, by causing undocumented immigrants (many of whom are already working illegally in the United States) and their employers to pay payroll and income taxes.

## **VII. Conclusion**

In conclusion, I believe that the DHS directives rest on sound legal footing and constitute good policy for our nation, its citizens, and the undocumented immigrants whose lives it will improve. The DACA and DAPA programs will make our country safer, will improve our nation's finances, and will further help us to secure our borders. I thank the Committee for the opportunity to introduce testimony on these issues, and I look forward to answering the Committee's questions.

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<sup>44</sup> National Immigration Law Center, *DACA and DAPA Access to Federal Health and Economic Support Programs* (Dec. 2014), available at <http://allianceforcitizenship.org/wp-content/uploads/2014/12/DAPA-DACA-and-fed-health-economic-supports.pdf>.

<sup>45</sup> National Immigration Law Center, *DACA and DAPA Access to Federal Health and Economic Support Programs* (Dec. 2014), available at <http://allianceforcitizenship.org/wp-content/uploads/2014/12/DAPA-DACA-and-fed-health-economic-supports.pdf>.

<sup>46</sup> Congressional Budget Office, Letter Re: Budgetary Effects of Immigration-Related Provisions of the House-Passed Version of H.R. 240, An Act Making Appropriations for the Department of Homeland Security (Jan. 29, 2015), available at <https://www.cbo.gov/sites/default/files/cbofiles/attachments/hr240.pdf>.